

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2382

ORIGINAL

United States Court of Appeals

For the Second Circuit.

69 Civ. 442.

JAMES M. MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM,
individually and on behalf of the members of the NATIONAL
MARITIME UNION OF AMERICA,

Plaintiffs-Appellees-Appellants,

against

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, ABRAHAM E. FREEDMAN, MARTIN SEGAL and LEON KARCHMER,

Defendants-Appellants-Appellees.

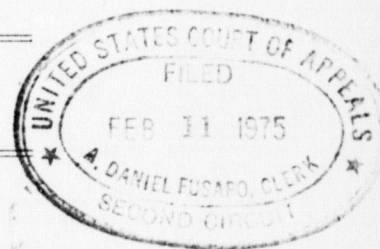
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

69 Civ. 442.

-----X
JAMES M. MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, indi-
vidually and on behalf of the members of the Nat-
ional Maritime Union of America,

Plaintiffs-Appellees-Appellants,

against

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, ABRAHAM E.
FREEDMAN, MARTIN SEGAL and LEON KARCHMER,

Defendants-Appellants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

-----X
SUPPLEMENTAL DOCKET ENTRIES.

<u>DATE</u>	<u>PROCEEDINGS</u>
1972	
November 17	Filed deft. Karchmer's memo submitted on the total record. Entered 12/14/72.
December 15	Filed defts. Joseph Curran & Shannon Wall NOTICE OF APPEAL \$5.00. from the judgment entered 11/15/72. mailed copies.
December 27	Filed letter from PAUL, WEISS, RIFKIND, WHARTON, GARRISON, Addressed to Duer & Taylor also Simpson, Thacher, & Bartlett, and also Surrey, Karasik, Morse, Seham
December 29	Certified record to the USCA

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
1973	
January 2	Filed defts. Segal & Leon Karchmer supplemental affidavit by Roy L. Reardon
January 10	Filed Defts. Order to Show Cause, Re: Order Granting Relief, Ret before Bonsal J. on 1/15/73.
January 10	Filed defts. Joseph Curran & Shannon Wall memo of law in support of application.
January 15	Filed memo endorsed on Order to Show Cause dtd. 1/10/73. Motion denied after argument. So Ordered Bonsal J. m/n
January 15	Filed Pltffs affidavit by Arthur E. McInerney.
January 26	Filed debt. Abraham Freedman's supersdeas Bond in the sum of \$302,741.95 by the National Surety Corp.
February 20	Filed transcript of the record of proceedings dtd. April 13, 14, 1972 and May 1, 1972 and July 12, 1972.
February 23	Filed Order that Kreindler, Relkin, Olick, Goldberg, Esqs. be substituted for Abraham Litke, Esq. as counsel in the above action for William Perry judgment debtor.
March 30	Filed stipulation that the exhibits in the Joint Appendix & Brief of Mr. Friedman may be certified to the Court of Appeals as supplemental record.
April 2	Certified Record to the USCA.
April 6	Filed After Trial Brief on behalf of plaintiffs on certain issues.
April 6	Filed Appendices of Atty. Duer & Taylor.
April 6	Filed Plaintiffs' Reply Memorandum.

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
April 6	Filed Reply memorandum in support of Deft. Perry's Motion to Dismiss the complaint.
April 6	Filed Deft. Perry's memo in reply to plaintiffs' after-trial brief.
April 6	Filed plaintiffs' proposed findings of fact and conclusions of law.
April 6	Filed plaintiffs' trial memorandum.
April 6	Filed plaintiff's pre-trial order (unsigned by Judge)
April 6	Filed plaintiffs' memorandum in reply to the brief submitted by Deft. Perry.
April 6	Filed Deft. Perry's Proposal for Pre-Trial Order.
April 6	Filed plaintiffs' pre-trial order. (unsigned by Judge)
April 6	Filed deft. Segal's pre-trial order.
April 6	Filed plaintiffs' notice of settlement of proposed decree. (unsigned by Judge)
April 6	Filed plaintiffs' notice of settlement of order. (unsigned by Judge)
April 6	Filed plaintiffs' notice of cross-motion.
April 6	Filed Deft. Perry's notice of counter proposal for final judgment. (unsigned by Judge)
April 6	Filed plaintiffs' notice of settlement of proposed interlocutory decree. (unsigned by Judge)
April 6	Filed plaintiffs' notice of settlement of proposed final judgment pursuant to Rule 54(b) of the F.R.C.P. (unsigned by Judge)

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
April 6	Filed Defts' Curran, Wall, Segal and Karchmer's Judgment. (unsigned by Judge)
April 6	Filed plaintiffs notice of settlement. (unsigned by Judge)
April 5	Certified Record to the USCA.
April 6	Certified Supplemental Record to the USCA.
May 17	Filed Opinion #39478. Decision is reserved on the quest of arrest & confinement of the contemnor William Perry. Pierce J (M/N)
May 18	Filed Supplemental affidavit in opposition to the motion by deft. William Perry.
August 31	Filed Memorandum of law in support of motion by judgment creditor for an order punishing judgment debtor for his adjudicated civil contempt.
August 31	Filed Pltffs. Notice of Motion. Re: Punishing William Perry = judgment debtor. ret. 9/10/73.
September 10	Filed Satisfaction of Judgment #72,963. (Partial)
September 12	Filed Stip & Order that the ret. date of the Judgment Creditors Motion be adjourned to 9/18/73 & reply papers on or before 9/13/73. Pierce J.
September 18	Filed Stip & Order that pltffs. motion punishing deft. W. Perry, be adjourned to 9/25/73; & deft. Perry answering affidavits, etc. be answered on or before 9/20/73. Pierce J.
September 19	Filed True Copy of USCA Mandate with opinion. Ordered that the Judgment of said District court is affirmed. Judgment Entered Clerk 9/19/73. Entered 9/24/73.

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
October 2	Filed reply affdvt of Lawrence I. List in support of motion for contempt.
September 25	Filed stip & order adjourning motion for contempt to 10-2-73.-Pierce, J.
October 4	Filed order-On May 16, 1973 this Court adjudged the judgment debtor William Perry in civil contempt and referred the matter to Magistrate Goettel for a hearing on the question of actual loss or injury suffered by the judgment creditor. The issue of actual loss or injury should be resolved prior to an order of punishment. The order of reference of 5-16-73 is hereby renewed, an in view of the passage of time the Magistrate is requested to expedite this matter. Decision of plttf's Aug. 31, 1973 motion, like the portion of its earlier motion with respect to punishment is hereby reserved pending the Magistrate's report on the issue referred. So Ordered-Pierce, J. mailed notices to attys. and sent copy of this order to Magistrate Goettel.
October 25	Filed Report and Recommendation of Magistrate Goettel.
October 29	Filed Supplemental Report & recommendation by Magistrate Goettel.
October 30	Filed True copy from the U.S.C.A. Ordered that the motion dated, 7-12-73, to tax costs as follows; the cost of appellees, Leon Karchmer & Martin Segal shall be paid equally by the four, non-prevailing appellants; Curran, Wall, Perry & Freedman; the, cost of the joint appendix shall be divided equally among, the four appellants; and each appellant, or group of appellants, shall bear the cost of its or their own brief or briefs., be & it hereby is granted. Hays, J. Timbers, J. Smith, J.

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
November 26	Filed Order the court further defers such a decision & to assist it in making this determination hereby directs that the judgment creditor submit to the court within 10 days from the date of this order a list identifying with particularity the documents & information it seeks to discover from judgment debtor. Pierce J. (mailed notice)
November 27	Filed Notice of Entry of order dated 11/20/73.
November 28	Filed Affidavit by Arthur S. Olick in opposition to creditors application.
November 29	Filed Supplemental affidavit of Lawrence I. List.
December 27	Filed Affidavit by Arthur S. Olick in opposition to List of documents & information requested by the judgment creditors motion to hold Mr. Perry in contempt.
1974	
January 9	Filed Order the judgment debtor William Perry, is directed to produce to the judgment creditors atty by registered mail returned receipt requested, etc. within 30 days information as indicated; This matter is referred to Magistrate Goettel for the resolution of any disputes that may arise in the implementation of this order. Pierce J. (mailed notice)
January 18	Filed Judgment Creditor Notice of Motion. Re: Reargument. ret. 1/28/74.
January 24	Filed Pltffs. Notice of Motion. Re: Payment of Services. ret. Sine Die.
January 24	Filed Memo. End. on motion dated 1/24/74. Motion referred to Judge Bonsal with his consent. Pierce J.
January 24	Filed Pltffs. Memorandum in support of motion.

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
January 24	Filed Memo. End. on motion dated 1/18/74. Motion for reargument to be premature & accordingly the motion is denied. Pierce J.
February 4	Filed deft's (Martin E. Segal) answering memorandum in opposition, to pltff's motion for an order.
February 1	Filed affidavit of H. E. Cooper in opposition to pltff's application.
February 28	Filed order-substituting attys for trustees of NMU Officers--Pierce, J.
May 1	Filed OPINION #40657: Pltff's seek additional atty's fees & disbursements for services rendered in connection with the appeals, As to the application by pltff's attys for attys fees & disbursements, a hearing will be held on a date to be fixed in the order, to be entered, at which pltff's attys may prove their attys fees, under the guidelines laid down by the Court of Appeals. Settle, order on notice. Bonsal, J. m/n
May 8	Filed pltff's Notice of motion for reargument of those parts of the Memorandum Decision of May 1, 1974 - Ret. 5-13-74.
May 8	Filed Pltff's Memorandum of Law in support of their motion to Reargue only certain parts of the Memorandum Decision of May 1, 1974.
May 14	Filed deft's Martin E. Segal affidavit & notice of motion for reargument of memorandum decision of 5-1-74 ret. 5-20-74.
May 14	Filed memorandum of Martin E. Segal in support of his motion ret., 5-20-74.
May 13	Filed deft's Leon Karchmer's notice of motion for reargument ret. 5-20-74.
May 13	Filed deft's Leon Karchmer's memorandum of law in support of his motion ret. 5-20-74.

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
May 16	Filed satisfaction of judgment #72,963.
May 22	Filed deft's memorandum of law in opposition to motion for reargument.
July 11	Filed Affidavit by Arthur E. McInerney by way of a final report on the attempts made to settle the issue of defts. attys. fees chargeable to the NMU Officers Fund---an NMU fund. This affidavit is made without prejudice.
July 15	Filed Affidavit by Mel Barisic in reference to counsel fees.
August 13	Filed transcript of record of proceedings, dated 6/28/74
August 26	Filed OPINION #41113. Pltffs' motion for reargument is denied. SETTLE ORDER ON NOTICE. Bonsal J.
September 13	Filed ORDER & JUDGMENT #74,743: Ordered that pltff's motion to hold, deft's J. Curran, S. Wall, M. Segal, Abraham E. Freedman & L. Karchmer, in contempt is denied. Pltff's motion for the allowance of additional attys fees is denied, pltff's motion for entry of judgment, against the National Surety Corp. is denied. Pltff's motion for, reargument is denied. Motions of deft's Martin Segal & Leon Karchmer, for reargument is denied, except as otherwise provided as indicated. Judgment in favor of the N.M.U. Officers' Pension fund in the, amount of \$31,906.72 against deft. Martin Segal. Judgment in favor, of the N.M.U. Officers' Pension fund against Leon Karchmer in the, amount of \$30,155.08. Etc. Hearing be held on 9-27-74 at 10 A.M. Room 706 on application by pltff's attys for fees. Bonsal, J. Judgment Ent. Clerk. m/n Ent. 9-17-74.
September 17	Filed transcript of record of proceedings, dated 6-28-74.

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
October 7	Filed Memorandum on behalf of Maritime Union of America AFL-CIO in opposition to, pltff's application for an award of counsel fees.
October 10	Filed deft. Leon Karchmer notice of appeal to the USCA from final judgment entered on 9-13-74. Mailed copies to Duer & Taylor, Simpson Thacher & Bartlett, Bromsen, Gammernan, Altier & Wayne & Charles Sovel.
October 16	Filed pltff's notice of appeal to the USCA from judgment entered, Sept. 13-74. Mailed copies to Abraham E. Freedman, Simpson, Thacher & Bartlett, Charles Sovel, Herman E. Cooper & Bromsen, Gammernan, Altier & Wayne.
October 21	Filed deft. Martin E. Segal's notice of appeal from judgment of 9/13/74. Mailed copies to: Simpson, Thacher & Bartlett & Herman Cooper, Durer & Taylor., Bromsen, Gammernan, Altier & Wayne., Abraham E. Freedman.
October 23	Filed Pltff's amended notice of appeal from judgment filed 9-13-74, mailed copies to Abraham E. Freedman, Simpson, Thacher & Bartlett, Charles Sovel, Herman E. Cooper & Bromsen, Gammernan, Altier & Wayne.
November 27	Filed Pltff's affidavit & show cause order granting an injunction ret. 12-9-74.
November 27	Filed pltff's memorandum of law in support of show cause order ret. 12-9-74.
December 11	Filed affidavit of J. P. Altier in support of application to remove the State Court case for decision by this court.
December 13	Filed Memo & decision #41576; Pltff's move for an allowance of attys fees for pltff's counsel, Duer & Taylor for services rendered in connection with appeals & petitions. Duer & Taylor are allowed \$13,000 as a reasonable additional attys fee, plus \$3,100 in disbursements, making a total of \$21,300. Settle order on notice. Bonsal, J. m/n

SUPPLEMENTAL DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
December 16	Filed memorandum of law of William Perry in opposition to plttf's application to enjoin a State Court Proceeding.
December 16	Filed affidavit of A. S. Olick in opposition to plttf's motion Re: Stay.
December 19	Filed deft's Leon Karchmer notice of motion for ext. of time for transmitting the record on appeal. Ret. before Bonsal, J.
December 3	Filed transcript of record of proceedings dtd. 10-7-74.
December 24	Filed Memo. End. on motion dtd. 1/18/74. Motion is denied. Pierce J. (mailed notice)
December 30	Filed ORDER that the defts. Abraham E. Freedman, Leon Karchmer & Martin Segal as trustees of the National Maritime Union of America Officers' Pension Fund pay the firm of Duer & Taylor, the sum of (\$21,000) dollars which sum is fixed & allowed as & for reasonable value of the additional legal services rendered by such firm herein subsequent to Nov. 15, 1974. Bonsal, J. m/n
December 30	Filed Memo-endorsed on deft's Leon Karchmer motion for extension of time: Motion granted. No opposition. So ordered. Bonsal, J.
1975	
January 6	Filed notice that supplemental record on appeal has been certified & transmitted to the USCA on 1-2-75.
January 13	Filed Memo-endorsed on show cause order filed 11-27-74. Plttf's motion & NMU's request are denied. So ordered. Bonsal, J. m/n

PLAINTIFFS' NOTICE OF MOTION, DATED JANUARY 17, 1974

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

SIRS:

PLEASE TAKE NOTICE that the plaintiffs will move this Court (Hon. Dudley B. Bonsal, U.S.D.J.), pursuant to Title 29 United States Code Section 501, Rule 14 of the Civil Rules of this Court and Rules 65.1, 69 and 70 of the Federal Rules of Civil Procedure, for an order:

1. Directing that the firm of Duer & Taylor be allowed and paid the sum of \$35,000.00 for their services on the appeals and petitions for writs and the sum of \$7,716.22 for their disbursements on the appeal, amounting in all to \$42,716.22;

2. Directing that the firm of Duer & Taylor be allowed and paid from the Fund the additional sum of \$72,000.00 for their services which have now resulted in the recovery by the Fund of \$291,833.30 inclusive of interest to January 15, 1974;

3. Adjudging that the defendants Curran, Wall, Freedman, Karchmer and Segal are in contempt of the provisions of the order of July 6, 1970 and punishing them to the extent that they have profited by their violation of the terms of said order;

PLAINTIFFS' NOTICE OF MOTION, DATED JANUARY 17, 1974

4. Directing that a judgment be entered against the National Surety Corporation in the sum of \$291,833.30 plus the costs as taxed against Mr. Freedman personally and directing that execution issue thereon; and

5. Directing such other, further and different relief as to the Court may seem just and proper; on January 28, 1974, at 9:30 A.M., or as soon thereafter as counsel can be heard, in Room 1505 at the Courthouse hereof, Foley Square, New York, New York.

DATED: New York, New York
January 17, 1974

Yours, etc.

DUER & TAYLOR

By: ARTHUR E. MCINERNEY
A Member of the Firm
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TO:

CLERK OF THE COURT
as Agent for the National Surety Corp.
United States District Court
Foley Square
New York, New York 10007

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PLAINTIFFS' NOTICE OF MOTION, DATED JANUARY 17, 1974

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AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO
JANUARY 16, 1974 IN SUPPORT OF PLAINTIFFS' MOTION.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

State of New York,
County of New York, ss:

Arthur E. McInerney, being duly sworn, deposes and
says:

I am a member of the firm of Duer & Taylor, attorneys for the plaintiffs, and make this affidavit in support of an application at the foot of the judgment herein pursuant to Section 501 of Title 29 United States Code, Rule 14 of the Civil Rules of this Court and Rules 65.1, 69 and 70 of the Federal Rules of Civil Procedure, for the following relief:

1. Compensation for the services rendered and reimbursement for disbursements incurred by Duer & Taylor on the appeals to the United States Court of Appeals for the Second Circuit and in opposition to the petitions for certiorari to the Supreme Court of the United States beneficial to the National Maritime Union (NMU) and to the NMU Officers' Pension Fund (Fund);
2. Compensation payable from the Fund for the services performed by Duer & Taylor in obtaining and

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO
JANUARY 16, 1974 IN SUPPORT OF PLAINTIFFS' MOTION

sustaining the judgment for \$273,740.50 in favor of the Fund against Mr. Abraham E. Freedman, which judgment has been secured and which is now about to be collected;

3. An adjudication that the defendants Joseph Curran, Shannon Wall, Abraham E. Freedman, Martin Segal and Leon Karchmer are in contempt of this Court by their willful violation of the provisions of the order made herein on July 6, 1970, in that each has in their defense of this action employed counsel "paid or to be paid with union funds", and;

4. A direction that a judgment be entered against the National Surety Corporation in the sum of \$291,833.30 plus the costs as taxed against Mr. Freedman personally and that execution issue thereon.

I

COMPENSATION FOR SERVICES ON APPEAL.

On November 15, 1972 a judgment was entered by this Court against Abraham E. Freedman individually and in favor of the trustees of the Fund.

Thereafter Mr. Freedman appealed the said judgment to the United States Court of Appeals for the Second Circuit. He engaged the Honorable Simon H. Rifkind to brief and argue the said appeal.

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO
JANUARY 16, 1974 IN SUPPORT OF PLAINTIFFS' MOTION

No trustee or union officer filed a brief in response to Judge Rifkind's brief or argued that the judgment against Mr. Freedman should be affirmed. It was left to the plaintiffs to answer the ingenious arguments raised on Mr. Freedman's behalf and to sustain the judgment against him. This was done.

On June 18, 1973 the Court of Appeals affirmed the judgment against Mr. Freedman.

Thereafter, on or about September 13, 1973, Mr. Freedman petitioned the Supreme Court of the United States for a writ of certiorari.

Again no trustee or union officer opposed Mr. Freedman. Again it was left to plaintiffs' counsel to oppose his petition. This was done.

On January 7, 1974 the Supreme Court of the United States denied Mr. Freedman's petition.

On February 18, 1972 a judgment was entered in this Court against William Perry for the sum of \$263,307.00 in favor of the Fund.

Mr. Perry appealed from that judgment. No union officer or trustee of the Fund opposed the Perry appeal. It was again left for the plaintiffs to defend the said judgment. This was done.

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO
JANUARY 16, 1974 IN SUPPORT OF PLAINTIFFS' MOTION

On June 18, 1973 the Court of Appeals affirmed the said judgment against Perry.

Mr. Perry petitioned for rehearing and upon rehearing the Court of Appeals adhered to its decision.

Thereafter, Mr. Perry petitioned the Supreme Court of the United States for a writ of certiorari and asked for permission to proceed in *forma pauperis*.

Meanwhile, Mr. Perry had been held in contempt by the District Court (Pierce, D.J.) in the proceedings supplementary to judgment brought by the Fund for failure to disclose his assets.

Nevertheless, incredible as it may seem, no union officer or trustee of the Fund opposed either the petition or the *forma pauperis* application. Plaintiffs did.

On January 7, 1974 the Supreme Court of the United States denied Mr. Perry's petition for a writ.

In addition, appeals were taken by Joseph Curran and Shannon Wall to the Court of Appeals from so much of the judgment of November 15, 1972 as awarded Duer & Taylor a fee payable by NMU for services rendered to it which had produced \$674,222.60. They claimed that such fee was excessive. The compensation allowed by this Court for obtaining that fully satisfied judgment was affirmed by the Court of Appeals.

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO
JANUARY 16, 1974 IN SUPPORT OF PLAINTIFFS' MOTION

This Part I of this application requests that the firm of Duer & Taylor be compensated for the services rendered on these appeals.

The firm of Duer & Taylor spent a total of 309 hours in preparing the appendix and briefs on the appeals to the Court of Appeals and on the applications to the Supreme Court for writs. These hours are comprised of 279 hours of partners' time and 30 hours of associate's time. (See Schedule 1 annexed.)

The time spent, the result achieved in sustaining the Freedman judgment alone and the character and eminence of those in opposition would justify a charge of at least \$35,000.00. One logical measure of such value can be the charge reputedly made by Judge Rifkind for his services - \$250.00 per hour or more [See *Lions in the Street*, Paul Hoffman (Saturday Review Press, New York, 1973), p. 129]. Surely the value of the services performed in successfully opposing Judge Rifkind (not to mention all the other opponents) should not be less than the value of his unsuccessful efforts.

The problems presented on the appeals were varied and complex. Some were novel. For example, Judge Rifkind argued that the District Court had no jurisdiction under the LMRDA over the Pension Fund and

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no jurisdiction to surcharge Freedman for his waste of that Fund. He also argued that the Court of Appeals could and should reconsider that point notwithstanding its affirmance on the prior appeal. Copies of the briefs, petitions and opposing briefs will be submitted.

In prosecuting and opposing these appeals and petitions on behalf of the membership of NMU the plaintiffs' counsel have incurred and paid necessary disbursements totaling \$7,716.22. (For the details, see Schedule 2 hereto annexed.) Although the Court of Appeals directed that the cost of the joint appendix in the appeal (the plaintiffs' cost was \$2,305.42) be taxed against Curran, Wall, Perry and Freedman personally, this has not yet been paid.

The compensation for services and the reimbursement for expenses should be charged to the NMU General Fund and to the Officers' Pension Fund in the ratio of the benefits realized by them respectively. It is respectfully suggested that in view of the issues raised by the appeals the major portion thereof should be charged to the Officers' Pension Fund.

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II

COMPENSATION FOR ALL SERVICES WHICH NOW HAVE CREATED
A \$272,740.50 FUND PLUS INTEREST.

In addition to compensation for the work performed on the appeals, described above, the plaintiffs' counsel should now be compensated by the Fund for the fair value of all services performed from the commencement of this action, and which were of benefit to the Fund as distinguished from those of benefit to the General Fund of the Union.

The judgment against Freedman and in favor of the Fund for \$272,740.50 with interest of \$19,092.80 to January 15, 1974, totaling \$291,833.30, will not be paid. Thanks to the insistence of plaintiffs' counsel this judgment has been adequately secured (See copies of my letters annexed hereto, made a part hereof and marked Exhibits 3, 4, 5, 6 and 7).

At this point in time, and not before, it appears that the Fund definitely had benefited by the services performed by plaintiffs' counsel. When the prior application for compensation was made the only tangible benefit then realized by this action was to the NMU Federal Fund. The compensation then allowed was directed by this Court to be paid by NMU. The compensation thus

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allowed and paid was slightly over 16% of the amount recovered by NMU. At the time of the previous application the judgment in favor of the Union had been paid.

In November of 1972 the plaintiffs had requested that compensation be allowed and paid from both the NMU General Fund and the Officers' Pension Fund in proportion to the benefits which had accrued to each. But the Court then restricted compensation to that which had benefited the NMU General Fund. No allowance was made for services which had benefited the Officers' Pension Fund. That Fund had not then benefited.

In the light of the time-honored and sanctified rule of equity that a fund created by the efforts of another should bear the fair cost of such creation, it can only be assumed that no allowance was then made from the Fund because at that time the Fund had realized no benefit from which compensation could be paid.

Now that benefit has been or is about to be realized in a very tangible fashion and in all fairness the Fund should pay for all cost including a fair award to counsel.

This is money brought back into the union fold, money which had been wasted and was gone beyond reach short of judicial process. The plaintiffs have fought this fight standing alone. No one - trustee or union officer - has lifted his little finger to help. Except

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for the plaintiffs' efforts the Fund would now be short \$291,833.30. It did not come easy. The result is a prophylactic. It should be a lesson to other trustees of union funds. The plaintiffs should be applauded. Their counsel should be fairly compensated. Only by this means can the rank and file of a national union be encouraged to pursue wasted union funds. Only by this means will it be possible for the rank and file to obtain the services of competent counsel for that purpose.

Traditionally, the awards in class actions have been in the area of 20% of the recovery obtained and upwards from that percentage to the area of 30% (with the 25% figure predominating), depending on the extent of the litigation, the complexities of the problems presented, the dexterity and tenacity of plaintiffs' counsel and on other considerations as well. Seldom are class actions fought out to the bitter end as this one has been. Here, every issue was tried out. Four appeals were taken to the Court of Appeals; all were briefed and argued. Two motions were made for rehearing and one for rehearing *en banc*, and three petitions were made to the Supreme Court for writs.

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I respectfully suggest that an award of 25% of the recovery by the Fund to plaintiffs' counsel, or \$72,000.00, payable by the trustees of the Fund, would be modest.

III

THE DEFENDANTS' CONTEMPT OF THIS COURT.

By order of this Court made on July 6, 1970 the "defendants" were;

"* * *enjoined from employing counsel paid or to be paid with union funds".

A copy of this order is annexed hereto and made a part hereof and is marked Exhibit 8. This order had been suggested by the mandate of the Court of Appeals.

The defendants have with gusto contemptuously breached and willfully violated this order.

The defendants have indeed employed counsel who have been paid out of the Fund to the tune of \$210,062.05 as of July 12, 1973 (See Exhibit 9). In the ensuing months they have, on information and belief, paid their various counsel additional sums out of the said Fund in an amount unknown.

These payments were not made in ignorance. They were not made inadvertently. They were made willfully

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and after a full and fair warning from this Court that such payments would be in violation of the July 6th order.

On September 22, 1970 Mr. Freedman and his partner Mr. Sovel (See Exhibit 10) appeared in this Court and took part in the proceedings as attorneys for Freedman, Curran and Wall. On that day this Court said (SM p. 6):

"My first problem, gentlemen, is rather a serious one. There was an order entered here that the defendants are enjoined from employing counsel paid or to be paid with union funds."

Addressing Mr. Freedman and Mr. Sovel, the Court continued (SM p. 8):

"On the issues that are here, I do feel very strongly that there is a conflict of interest here and I do think that you ought to comply with this order. It doesn't really matter that you feel that there are is (sic.) no conflict. I rather think there is."

Then, fully conscious of the impact of this Court's remarks, Mr. Freedman said (SM pp. 8-9):

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"I would respect your Honor's judgment,
but I would just like to take another chance
at trying to change it, if I may."

The final word (from the Court) to Mr. Freedman
was (SM p. 11):

"I think we ought to comply with the
order that was filed here of July 6, 1970."

At the same conference (September 22, 1970) Mr.
Freedman stated (SM p. 7):

"* * *my associate (Sovel) and I have to be
regarded as the same, I will admit -- we have
no financial interest in this one way or the
other." (Parenthetical matter added.)

Thus he recognized that neither he nor his partners
or associates could, under the terms of the order, take
part in the pending litigation adverse to the interest
of the union.

Finally, on January 15, 1973, Mr. Freedman moved
by order to show cause to relieve Curran and Wall of
the July 6, 1970 injunction. That motion was denied.

Nevertheless, Mr. Freedman allowed other of his
partners and associates; namely, Messrs. Barrish and

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Lorry, to appear for him on his petition to the Supreme Court for a writ of certiorari.

Following the September 22, 1970 conference and at this Court's insistence, other counsel, Messrs. Bloom and Epstein, appeared for Messrs. Freedman, Curran and Wall. But it now appears that, in spite of the July 6th order and in spite of this Court's warning, the Bloom and Epstein firm was paid up to July 12, 1973, from the Fund, sums totaling \$51,803.37. I am informed and believe that a further bill has been submitted to the Fund by this firm for an additional amount in excess of \$30,000. I am further informed that the trustees intend to honor the additional bill in whole or in part. Parenthetically, it should be noted that Bloom and Epstein participated in only a small fraction of this case. They did not appear until long after the first round of appeals had been completed and did not participate at all in the second round of appeals.

Moreover, the defendants Karchmer and Segal had jointly employed the firm of Simpson, Thacher & Bartlett to represent them at the inception of this lawsuit. It appears that prior to the order of July 6, 1970, \$16,479.02 had been paid out of the Fund for that representation and that \$12,443.24 was paid thereafter on the same account (The dates of the exhibit are not too clear).

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Thereafter, after the order of July 6, 1970, the defendant Segal paid his counsel \$57,068.86 out of the Fund, as of July 12, 1973, and on information and belief an additional sum since then. I have not been informed of the amount.

The defendant Karchmer, after the order of July 6, 1970, paid his counsel \$53,531.15 out of the Fund as of July 12, 1973, and on information and belief an additional sum since that date, amount unknown.

Also, in a very real sense, the expense of counsel in the proceedings brought by the trustees supplementary to the judgment against Perry was incurred and paid from the Fund in an unsuccessful effort to pull Freedman's "chestnuts out of the fire". Had the trustees been able to collect the judgment entered against Perry, Freedman would have been indemnified. These proceedings were handled by Messrs. Botein, Hays, Sklar & Herzberg and their compensation, amounting to \$18,736.41 as of July 12, 1973, was also paid from the Fund. On information and belief this firm has also been paid an additional sum in an unknown amount.

Thus, to date, and since July 6, 1970, the attorneys for the defendants have been paid from the Fund the following amounts:

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To Messrs. Bloom and Epstein Attorneys for Freedman, Curran and Wall	\$51,803.37
To Messrs. Simpson, Thacher & Bartlett Attorneys for Mr. Segal	57,068.86
To Messrs. Surrey, Karasik Morse & Seham Attorneys for Mr. Karchmer	53,531.15
To Messrs. Simpson, Thacher & Bartlett Attorneys for Mr. Segal and Mr. Karchmer	12,443.24
To Messrs. Botein, Hays, Sklar & Herzberg Attorneys for the Defendant- Trustees	<u>18,736.41</u>
	\$193,583.03

Prior to July 6, 1970 the trustees had paid Messrs. Simpson, Thacher & Bartlett the sum of \$16,479.02 from the Fund for services rendered to the defendants Karchmer and Segal. In all the Fund has already disbursed \$210,062.05 for defendants' counsel.

In addition thereto some or all of said attorneys, on information and belief, have already presented or now intend to present to the Fund bills for further services performed for the defendants after July 6, 1970 - some of which have been paid.

The Officers' Pension Fund consists solely of NMU funds. No employer organization contributed any part.

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When the order of July 6, 1970 forbade the payment from union funds, the injunction, of force, protected not only the NMU General Fund but the Officers' Pension Fund as well. The conflict which this Court envisaged on September 22, 1970 existed with reference to the latter fund as well as to the former. The order of July 6, 1970 protected both from the stigma of having to finance the defense of an action brought to protect it. Unless that were so there would have been no point in including counsel for *all* defendants within the scope of the order. Neither Freedman, nor Karchmer, nor Segal were union officers. However, they were defendants and were enjoined along with Curran, Wall and Perry.

IV

RULE 65.1 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

To stay execution of the judgment pending the appeals, Mr. Freedman posted a supersedeas bond with the Clerk of this Court. Now that the judgment of November 15, 1972 has been finally affirmed, a judgment should be entered against the National Surety Corporation in the sum of \$291,833.30 plus the costs as taxed against Mr. Freedman personally and execution should issue thereon.

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Except as above mentioned, no previous application has been made for the relief herein prayed to any Court or Judge.

WHEREFORE, I respectfully request that an order be made herein:

1. Directing that the firm of Duer & Taylor be allowed and paid the sum of \$35,000.00 for their services on the appeals and petitions for writs and the sum of \$7,716.22 for their disbursements on the appeal, amounting in all to \$42,716.22;
2. Directing that the firm of Duer & Taylor be allowed and paid from the Fund the additional sum of \$72,000.00 for their services which have now resulted in the recovery by the Fund of \$291,833.30 inclusive of interest to January 15, 1974;
3. Adjudging that the defendants Curran, Wall, Freedman, Karchmer and Segal are in contempt of the provisions of the order of July 6, 1970 and punishing them to the extent that they have profited by their violation of the terms of said order;
4. Directing that judgment be entered against the National Surety Corporation for the sum of \$272,740.50 plus interest thereon from November 15, 1972 until the date of payment thereof plus the costs to be taxed against Abraham E. Freedman; and

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5. Directing such other, further and different
relief as to the Court may seem just and proper.

(Sworn to by Arthur E. McInerney, January 16, 1974.)

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

Arthur E. McInerney's Time
Morrissey v. Curran Appeal

November 16, 1972	Upon receipt of card from Clerk of the Court and noting decision rendered from Judge Bonsal, went to court. Decision digested. Conferences with John S. Chapman, Jr. ("JSC") and Frederick M. Schlater ("FMS") concerning decision and steps to be taken.	4 hrs.
December 5, 1972	Drafting and redrafting Notice of Appeal. Conference with JSC and FMS and review of the notice with them. Telephone call to R. Reardon and M. Cantor to ascertain whether or not Freedman had paid judgment against him. He had not.	2 1/2 hrs.
December 7, 1972	Working on appeal	3 1/2 hrs.
December 13, 1972	Reviewing records and doing legal research pertaining to appeal. Telephone calls to Simpson, Thatcher & Partlett ("S,T&P"); Bloom and Epstein ("B&E"); and Surrey, Karasik, Morse and Seham ("S,K,M&S") for preliminary talks re possibility of joint appendix.	3 hrs.
December 18, 1972	Dictated letter to S,T&P, S,K,M&S and Paul, Weiss, Rifkind, Wharton & Garrison ("P,W,R,W&G") re Freedman judgment	1/4 hr.
December 21, 1972	Telephone conference with Mel Cantor of S,T&P	1/4 hr.
December 27, 1972	Telephone conference with Roy Reardon of S,T&P re Freedman judgment; dictated letter in confirmation	1/2 hr.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

December 28, 1972	Received and read letter from Roy Reardon of S,T&B; dictated response	1/4 hr.
December 29, 1972	Reviewing letter and list of documents; dictated letter to Neil Cogan of P,W,R,W&G	1/4 hr.
January 2, 1973	Received and read letter from Clerk of the Court of Appeals and dictated letter to Clerk of the District Court	1/4 hr.
January 3, 1973	Preparation of materials for appendix on appeal and telephone conversations; dictating letter to all parties re conference	1 1/2 hrs.
January 4, 1973	Preparation for conference re appendix and conference (those who attended were Mel Cantor of S,T&B and Neil Cogan of P,W,R,W&G). Dictated letter to all parties re agreement.	2 hrs.
January 5, 1973	Telephone conversation with Mel Cantor of S,T&B re deletion of stenographic minutes of Karchner and Segal testimony because the only issue is one of law.	1/4 hr.
January 8, 1973	Received and read letter from Kreindler, Belkin, Olick & Goldberg ("K,R,O&G"); dictated letter to all parties; received order to show cause, read and considered same	1 1/4 hrs.
January 9, 1973	Received and read letter from S,T&B	1/4 hr.
January 10, 1973	Preparation of affidavit	2 hrs.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

January 12, 1973	Received and read letter from Greenhill & Speyer; preparation of motion to consolidate appeals and seeking other relief	1 hr.
Saturday, January 13, 1973	Working on appeal - appendix	2 hrs.
January 15, 1973	Received letter from Greenhill & Speyer. Telephone conferences with Morrissey. Two trips to court: (1) Opposing Freedman's motion to reappear on the appeal; Judge Bensal denied motion from the bench; (2) Delivery of affidavits of service to the Ct. of Appeals; dictated two letters to P,W,R,W&G	2 1/2 hrs.
January 19, 1973	Received and read letter from Arthur Olick of K,R,O&G	1/4 hr.
January 22, 1973	Dictated letter to P,W,R,W&G	1/4 hr.
January 30, 1973	Working on brief and appendix	2 hrs.
January 31, 1973	Working on brief and appendix	2 hrs.
February 13, 1973	Dictated letter to Bromson, Gammernan, Altier & Wayne	1/4 hr.
February 20, 1973	Dictated letter to Bromson, Gammernan, Altier & Wayne	1/4 hr.
March 12, 1973	Work on appeal including preparation of affidavit	2 hrs.
March 13, 1973	Work on appeal	1 hr.
March 14, 1973	Work on appeal	1 1/2 hrs.
March 15, 1973	Work on appeal	1 hr.
March 16, 1973	Work on appeal	2 hrs.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

March 19, 1973	Work on appeal	1 hr.
March 20, 1973	Work on appeal	1 hr.
March 21, 1973	Work on appeal	1 1/2 hrs.
March 22, 1973	Work on appeal	2 hrs.
March 23, 1973	Printed brief completed; preparation of affidavit; conference with Robert J. Woolsey re filing of exhibits; conference with Mr. Morrissey	2 hrs.
March 30, 1973	Preparation of argument; review of record in connection therewith; trip to District Court to certify 3 exhibits to the Court of Appeals - 2, 2A and 11. These exhibits not duplicated in joint appendix. Preparation of plaintiffs' addendum to joint appendix (Exhibit 11). Signed stipulation.	3 hrs.
Saturday, March 31, 1973	Long-distance telephone call from country to Riskind's office 8.00 a.m. Preparation of telegram re proposed stipulation. Preparation of affidavit to be submitted with plaintiffs' addendum to joint appendix. Preparation for oral argument.	3 hrs.
April 2, 1973	Dictated letter to the Clerk of the Court of Appeals and preparation of affidavit	1/2 hr.
April 3, 1973	Dictated letter to Bromson, Gammelman, Altier & Wayne	1/4 hr.
April 6, 1973	Received and read affidavit from Riskind's office re reply brief	1/4 hr.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

April 9, 1973	Preparation for argument	2 hrs.
April 10, 1973	Preparation for argument	2 hrs.
April 11, 1973	Preparation, appearance and argument in Court of Appeals; conference with Morrissey; conference with JSC and FMS	3 1/4 hrs.
June 18, 1973	Received Court of Appeals decision, read and studied	1 hr.
June 19, 1973	Drafting and redrafting petition for rehearing	2 1/2 hrs.
June 20, 1973	Redrafting petition	2 1/2 hrs.
June 21, 1973	Redrafting petition	2 hrs.
June 22, 1973	Redrafting petition	1 1/2 hrs.
Saturday, June 23, 1973	Redrafting petition	2 hrs.
Sunday, June 24, 1973	Redrafting petition	1 1/2 hrs.
June 25, 1973	Redrafting petition	2 hrs.
June 26, 1973	Petition and receipt of letter from K, R, OAG addressed to Judge Hays dated 6/25/73 with letter dated 6/19/73	2 hrs.
June 27, 1973	Redrafting petition	1 hr.
June 29, 1973	Legal research re taxation of costs; preparation of affidavit re same	1 hr.
July 12, 1973	Read and considered Altier affidavit re taxation of costs; conference with Robert J. Woolsey re same	1/2 hr.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

July 13, 1973	Read and considered affidavit of Edward Costikyan of Rifkind's office; prepared answering affidavit, drafts and redrafts of same; legal research and memorandum of law; conference with Morrissey; trip to courthouse	2 1/2 hrs.
July 14, 1973	Reread papers in connection with taxation of costs; redrafted brief	1 hr.
July 15, 1973	Reread papers in connection with taxation of costs; refracted brief	1 hr.
July 16, 1973	Brief on double costs revised and retyped; trip to Court of Appeals; filed papers	1 hr.
July 25, 1973	Drafting letter to trustees re collection of judgment and conference with JSC re same	1/2 hr.
July 29, 1973	Reading affidavit and bill of costs submitted by defendant Segal and preparation of affidavit	1/2 hr.
September 14, 1973	Received petition for writ. Work on opposition to petition for writ.	4 hrs.
Saturday		
September 15, 1973	Study and consideration of Freedman petition	2 hrs.
September 17, 1973	Work on brief in opposition	2 hrs.
September 18, 1973	Work on opposition and cross petition	6 1/2 hrs.
September 19, 1973	Work on cross petition; conference with JEC and FAS (1/2 hr.)	8 hrs.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

September 20, 1973	Work on cross petition for writ and opposition to Freedman petition for writ. Supper at office	8 hrs.
September 21, 1973	Work on cross petition and supplemental appendix	6 hrs.
September 24, 1973	Work on supplemental appendix, cross petition and answer to Freedman	9 hrs.
September 25, 1973	Work on answer to Freedman	2 hrs.
September 26, 1973	Work on cross petition, answer to Freedman and supplemental appendix	6 hrs.
September 27, 1973	Work on cross petition, answer to Freedman and supplemental appendix. Supper at office	4 hrs.
September 28, 1973	Work on cross petition, answer to Freedman and supplemental appendix. Supper at office	4 hrs.
<hr/>		
Saturday		
September 29, 1973	Work on cross petition	2 hrs.
October 1, 1973	Telephone to printer	1/4 hr.
October 2, 1973	Luncheon conference re cross petition and answering brief in Sup. Ct. (with James Morrissey)	2 hrs.
October 29, 1973	Received Karchmer brief in opposition, read and con- sidered same; conference with JSC	1 hr.
October 30, 1973	Received Segal brief in opposition, read and con- sidered same. Study of cases. Conference with JSC and FMS.	3 1/2 hrs.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

- October 31, 1973 Received Curran and Wall brief in opposition, read and considered same. Legal research. Conference with JSC. Drafting notes re reply. 4 hrs.
- November 1, 1973 Further draft of Reply to Supreme Ct. Telephone call to Supreme Ct. to tell Clerk that we intended to file a reply. 2 hrs.
- November 5, 1973 Received Perry affidavit, petition and supplemental appendix. Read and considered same. Conference with JSC. Conference with J. Morrissey. 3 1/2 hrs.
- November 7, 1973 Work on affidavit in response to Perry; legal research. 5 hrs.
- November 8, 1973 Work on replies and brief in opposition to Perry petition 6 1/2 hrs.
- November 9, 1973 Telephone to Supreme Ct. Work on brief in opposition to Perry petition and replies 7 hrs.
- November 12, 1973 Conference with Morrissey 2 hrs.
- November 13, 1973 Telephone conference with Cooper re prospects on all writs 1/4 hr.
- December 4, 1973 Telephoned long-distance to Supreme Ct.'s Clerk's office to check on whether any other briefs in opposition to Perry's application for a writ had been filed. Negative. I asked the Clerk when the matter would be submitted; answer, "Toward the end of the week". Conference with JSC. 1/2 hr.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

December 28, 1973	Reviewing file for purpose of drafting affidavit for District Ct. application re counsel fees on the appeals and petitions for writs of certiorari and to punish the defendants Curran, Wall, Freedman, Karchner and Segal for their contempt	2 hrs.
January 8, 1974	Work on affidavit	2 1/2 hrs.
January 9, 1974	Work on affidavit	1 hour
January 10, 1974	Work on affidavit	1 hour
January 11, 1974	Work on affidavit	2 hours
January 14, 1974	Work on affidavit	1 hour
		<hr/> 200 1/4 hrs.

John S. Chapman, Jr.'s Time
Morrissey v. Curran Appeal

January 30, 1973	Work on brief	3 hrs.
January 31, 1973	Work on brief	6 hrs.
February 1, 1973	Work on brief	3 hrs.
February 2, 1973	Work on brief and brief galley	5 1/2 hrs.
February 5, 1973	Conference with Arthur E. McInerney re brief	3/4 hr.
February 6, 1973	Work on brief	2 hrs.
February 22, 1973	Brief	3 hrs.
February 23, 1973	Work on brief; conference with Arthur E. McInerney	6 hrs.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

March 9, 1973	Work on reply brief	3 hrs.
Saturday, March 10, 1973	Work on reply brief	2 hrs.
Sunday, March 11, 1973	Work on reply brief	2 hrs.
March 12, 1973	Work on reply brief	5 hrs.
March 13, 1973	Work on reply brief	1 1/2 hrs.
March 14, 1973	Brief at night	2 hrs.
March 15, 1973	Brief	4 hrs.
March 16, 1973	Brief	2 hrs.
Saturday, March 17, 1973	Brief	3 hrs.
March 19, 1973	Brief	5 hrs.
March 20, 1973	Brief	3 hrs.
March 21, 1973	Brief	3 hrs.
September 17, 1973	Reply Brief to Supreme Ct.	4 hrs.
September 18, 1973	Reply Brief to Supreme Ct.	6 hrs.
September 19, 1973	Reply Brief to Supreme Ct.	<u>4 hrs.</u>
		78 3/4 hrs.

SCHEDULE 1, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

Robert J. Woolsey's Time
Morrissey v. Curran Appeal

December 6, 1972	Review of file and research on supersedeas bond	2 1/2 hrs.
December 7, 1972	Preparation of record on appeal	5 1/2 hrs.
December 8, 1972	Indexing of record on appeal-collecting record from Judge Bonnal and District Court	1 hr.
December 12, 1972	Index record	5 hrs.
December 13, 1972	Index record	2 hrs.
December 14, 1972	Final preparation of index - 120 documents and transmission to appeals court	5 1/2 hrs.
January 9, 1973	Legal research. Preparation of motion for preference	2 hrs.
January 11, 1973	Legal research	1 hr.
March 18, 1973	Legal research	2 1/2 hrs.
March 22, 1973	Preparation of list of exhibits	1 hr.
March 24, 1973	Brief review	1 hr.
March 30, 1973	Preparation of record	<u>1 hr.</u>
		30 hrs.

In addition to the 30 hours listed, there were approximately 20 trips to the Federal Court made by Robert J. Woolsey for deliveries, conferences with Appeals Clerk, etc.

SCHEDULE 2, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

MORRISSEY, ET AL v. CURRAN, ET AL
69 Civ. 442

DISBURSEMENTSIn the Supreme Court

October 4, 1973

Clerk of the Supreme Court
 of the United States -

Docket Fee for Cross-Petition \$ 100.00

October 5, 1973

Press of Fremont Payne, Inc.

Printing 65 copies of Cross-Petition
 for a Writ of Certiorari to the
 United States Court of Appeals for
 the Second Circuit

569.70

October 9, 1973

Press of Fremont Payne, Inc.

Printing 65 copies of Respondents'
 Brief in Opposition to the Petition
 for a Writ of Certiorari

368.06

October 9, 1973

Press of Fremont Payne, Inc.

Printing 60 copies of Cross-
 Petitioners' Supplemental
 Appendix to Petition

1,602.54

November 14, 1973

Press of Fremont Payne, Inc.

Printing 60 copies of Cross-
 Petitioners' Replies to Briefs
 in Opposition

200.30

November 14, 1973

Press of Fremont Payne, Inc.

Printing 60 copies of Brief for
 Respondents Morrissey, Padilla
 and Ibrahim in Opposition to
 the Petition Filed by William Perry

150.01

SCHEDULE 2, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

In the Court of AppealsDecember 29, 1972

Clerk of the Court, U.S.

Court of Appeals

Docket Fee

25.00

February 8, 1973

Press of Fremont Payne, Inc.

Offsetting 60 copies of Appendix
(Vols. I and II)-serving and filing

2,305.42

Offsetting Affidavit of Perry

88.28

February 20, 1973

Press of Fremont Payne, Inc.

Printing 50 copies of Brief of
Plaintiffs-Appellants-Appellees

713.80

April 3, 1973

Press of Fremont Payne, Inc.

Printing 45 copies of Reply Brief
and Brief of Plaintiffs-Appellants-
Appellees

907.17

June 29, 1973

Press of Fremont Payne, Inc.

45 Petitions for Rehearing and
for Rehearing En Banc

573.00

December 21, 1972

Davis, Dorland & Co.

Premium on Appeal Bond

10.00

November 27, 1973

Davis, Dorland & Co.

Premium on Appeal Bond

10.00

Total Disbursements

97,716.22

NOTE: Disbursements for car fare, supper
conferences and miscellaneous
expenditures not charged.

45a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

PRESS OF FREMONT PAYNE, INC.

Law and Corporation Printing

417 CANAL STREET
NEW YORK, N. Y. 10013

OPEN DAY AND NIGHT

Phone: 966-6570

LINOTYPE COMPOSITION

When making inquiries
please mention order

No. 54702

October, 3, 1973

To Arthur E. McInerney, Esq.,
74 Trinity Place,
New York, New York.

Printing 65 copies of Cross-Petition for a
Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

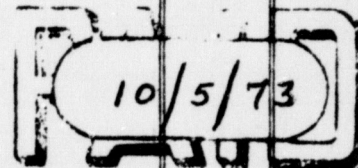
\$551.15

tax

38.58

\$589.73

FREEDMAN V. MORRISSEY, ET AL



BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

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Phone: 966-6570

October 5, 1973

To Arthur E. McInerney, Esq.,
74 Trinity Place,
New York, New York.

Printing 6 5 copies of Respondents' Brief in opposition to the Petition for a Writ of Certiorari	\$ 344.00
tax	24.08
	\$368.08

FREEDMAN V. MORRISSEY, ET AL

10/9/73

47a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

PRESS OF FREMONT PAYNE, INC.

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No. 54673

417 CANAL STREET
NEW YORK, N. Y. 10013

OPEN DAY AND NIGHT

Phone: 966-6570

October 5, 1973

To Arthur E. McInerney, Esq.,
74 Trinity Place,
New York, New York 10006

Printing 60 copies of Cross-Petitioners'
Supplemental Appendix to Petition for a
Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

\$1,497.70
104.84

\$1,602.54

FREEDMAN V. MORRISSEY, ET AL

10/9/73

48a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

PRESS OF FREMONT PAYNE, INC.

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When making inquiries
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No. 54993

417 CANAL STREET

NEW YORK, N. Y. 10013

OPEN DAY AND NIGHT

Phone: 966-6570

November 13, 1973

To Arthur E. McInerney, Esq.,
74 Trinity Place,
New York, New York.

Printing 60 copies of Cross-Petitioners'
Replies to Briefs in Opposition

\$192.80

tax

13.50

\$206.30

FREEDMAN V. MORRISSEY, ET AL

11/14/73

49a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

PRESS OF FREMONT PAYNE, INC.

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NEW YORK, N. Y. 10013

OPEN DAY AND NIGHT

Phone: 966-6570

LINOTYPE COMPOSITION

When making inquiries
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No. 54992

November 12, 1973

To
Arthur E. McInerney, Esq.,
74 Trinity Place,
New York, New York.

Printing 60 copies of Brief for Respondents
Morrissey, Padilla and Ibrahim in
Opposition to the Petition Filed by
William Perry

\$145.80

tax

10.21

\$156.01

PERRY V. MORRISSEY, ET AL

OK
11/14/73

50a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY
PRESS OF FREMONT PAYNE, INC.

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417 CANAL STREET
NEW YORK, N. Y. 10013

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When making inquiries
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No. 53094....

OPEN DAY AND NIGHT

Phone: 966-6570

February 7, 1973

To Duer & Taylor, Esqs.,
74 Trinity Place,
New York, New York.

Offsetting 60 copies of Appendix, (Vols. I
and II)--serving and filing

tax

\$4,309.20

301.64

\$4,610.84 \$4,610.84

½ to be paid by Duer &
Taylor - - - - \$2,305.42
½ to be paid by Paul, Weiss,
Rifkind, Wharton &
Garrison - - - - \$2,305.42

Offsetting Affidavit of Perry

tax

82.50

5.78

88.28

\$4,699.12

MORRISEY, ET AL V. CURRAN, ET AL

PAID
2/8/73

51a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

PRESS OF FREMONT PAYNE, INC.

Law and Corporation Printing

LINOTYPE COMPOSITION

When making inquiries

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No. 53199

417 CANAL STREET

NEW YORK, N. Y. 10013

OPEN DAY AND NIGHT

Phone: 966-6570

February 9, 1973

To Duer & Taylor, Esqs.,
74 Trinity Place,
New York, New York, 10006

Printing 50 copies of Brief of Plaintiffs-
Appellants-Appellees

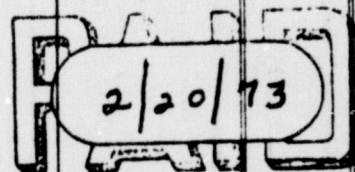
\$667.10

tax

46.70

\$713.80

MORRISSEY, ET AL V. CURRAN, ET AL



52a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY
PRESS OF FREMONT PAYNE, INC.

Law and Corporation Printing

417 CANAL STREET
NEW YORK, N. Y. 10013

OPEN DAY AND NIGHT

Phone: 966-6570

LINOTYPE COMPOSITION

When making inquiries
please mention order
No. 53508

March 27, 1973

To Duer & Taylor, Esqs.,
74 Trinity Place,
New York, New York.

Printing 45 copies of Reply Brief and Brief of
Plaintiffs-Appellants-Appellees

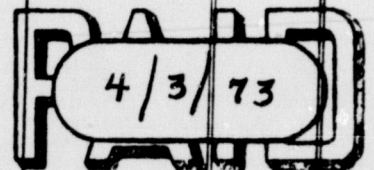
\$903.90

tax

63.27

\$967.17

MORRISSEY ET AL V. CURRAN, ET AL



53a

BILLS, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY
PRESS OF FREMONT PAYNE, INC.

Law and Corporation Printing

**417 CANAL STREET
NEW YORK, N. Y. 10013**

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Phone: 936-6570

LINOTYPE COMPOSITION

When making inquiries
please mention order
No. **54033**

June 28, 1973

To **DUER & TAYLOR ATTN.: MR. MCINERNEY
74 TRINITY PLACE
NEW YORK, NEW YORK**

45 BRIEFS
SERVING AND FILING -----

TAX ----

\$536.35
\$ 37.54

\$573.89

MORRISSEY v. CURRAN

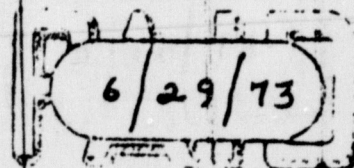


EXHIBIT 3, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

December 28, 1972

Roy L. Reardon, Esq.
Simpson Thacher & Bartlett
One Battery Park Plaza
New York, New York 10004

Re: In the Matter of the collection of
the Judgment obtained by Morrissey
in favor of the trustees against
Abraham E. Freedman.

Dear Roy:

Your letter of December 27, 1972 is somewhat
baffling to me.

Since Abraham E. Freedman is a lawyer, he
knows better than any layman the consequences of his
failure to post a supercedeas bond. So does
Judge Rifkind.

If Messrs. Segal and Karchmer are acting in
good faith, their path is clear and straight and at
this stage, with the Perry episode in the background,
no delay is justifiable.

Sincerely,

AEM:ht

EXHIBIT 4, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

BY HAND

December 27, 1972

Roy Reardon, Esq.
Simpson, Thacher & Bartlett
One Battery Park Plaza
New York, New York 10004

Re: In the Matter of the collection of
the Judgment obtained by Morrissey
in favor of the trustees against
Abraham E. Freedman.

Dear Roy:

This will confirm our telephone conversation
of this date.

Unless appropriate steps are taken against
Freedman to collect the judgment of November 15, 1972
in the sum of \$272,740.50 plus interest to the date of
collection, we will have no alternative but to take
the necessary steps against your clients, Segal and
Karchmer.

I am surprised that you have not already
issued execution since apparently Mr. Freedman has
chosen not to post any supercedas bond.

There is no reason why execution should not
issue before the new year.

that portion of
I am enclosing a copy of the draft of the
complaint which would have affected your clients had you
not convinced me that appropriate steps are in the
process of being taken. I have revised this draft on
your representation that appropriate steps are being
taken.

With best wishes to you personally for
A Happy and Prosperous New Year, I am

Sincerely yours,

EXHIBIT "4"

AFM:ht
Encl.
cc: Herman Cooper, Esq.,
Surrey, Karasik, Morse & Seham

EXHIBIT 5, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

December 18, 1972

Paul, Weiss, Rifkind, Wharton
& Garrison
345 Park Avenue
New York, N. Y. 10022

Re: Morrissey v. Curran,
Judgment in favor of Trustees
against Abraham E. Friedman,
Individually.

Sirs:

Please take notice that the plaintiffs
expect that you will take the appropriate actions
to collect the above entitled judgment against
Mr. Abraham E. Friedman promptly and in full.

Very truly yours,

DUER & TAYLOR
Attorneys for the Plaintiffs

By _____
Arthur E. McInerney,
Member of the firm

AEM:ht

cc: Surrey, Karasik, Morse and Seham
Simpson, Thacher & Bartlett

57a

EXHIBIT 6, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

December 18, 1972

Simpson, Thacher & Bartlett
One Battery Park Plaza
New York, New York 10004

Re: Morrissey v. Curran.
Judgment in favor of Trustees
-against- Abraham E. Friedman,
Individually.

Sirs:

Please take notice that the plaintiffs expect that you will take the appropriate actions to collect the above entitled judgment against Mr. Abraham E. Friedman promptly and full.

Very truly yours,

DUER & TAYLOR,
Attorneys for the Plaintiffs

By _____

Arthur E. McInerney,
Member of the firm.

AEM:ht

cc: Surrey, Karasik, Morse and Seham
500 Fifth Avenue, New York, N.Y.

Paul, Weiss, Rifkind, Wharton
& Garrison
345 Park Ave., New York, N.Y. 10022

EXHIBIT "6"

58a

EXHIBIT 7, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

December 18, 1972

Surrey, Karasik, Morse and Seham
500 Fifth Avenue
New York, New York

Re: Morrissey v. Curran
Judgment in favor of Trustees
against Abraham E. Friedman,
Individually.

Sirs:

Please take notice that the plaintiffs
expect that you will take the appropriate
actions to collect the above entitled judgment
against Mr. Abraham E. Friedman promptly and
in full.

Very truly yours,

DUER & TAYLOR
Attorneys for the
Plaintiffs

By Arthur E. McInerney,
Member of the firm

AEM:ht

cc: Simpson, Thacher & Bartlett
Paul, Weiss, Rifkind, Wharton & Garrison

E X H I B I T "Z"

EXHIBIT 8, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

-----X

JAMES M. MORRISSEY, JOSEPH PADILIA, RALPH IBRAHIM,
individually and on behalf of the members of the
National Maritime Union of America,

Plaintiffs,

against

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN
SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER,

Defendants.

-----X

Upon reading the mandate of the United States Court
of Appeals for the Second Circuit dated February 20,
1970, filed in this Court May 22, 1970, and the Opinion
of the United States Circuit Court of Appeals dated
February 20, 1970, and all the pleadings and proceedings
heretofore had herein,

Now, on motion of Duer & Taylor, attorneys for
plaintiffs, it is

ORDERED that the Order of this Court herein dated
July 11, 1969, and the Judgment entered July 18, 1969,
is in all respects confirmed; and it is further

EXHIBIT 8, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

ORDERED that the June 24, 1969 Amendments to the NMU Constitution, having been found exculpatory by the Court of Appeals and hence prohibited by §501(a) of the Labor Management Reporting Act of 1959, are declared to be void and without effect and defendants are enjoined from acting in reliance upon them, and the Order of this Court filed July 8, 1969 is vacated; and it is further

ORDERED that the defendants serve the plaintiffs with a copy of the account and file the original thereof with the Court forthwith not later than July 31, 1970; plaintiffs shall serve and file objections to the accounting, if any, within thirty days after service upon them of the accounting; plaintiffs shall commence discovery in support of their objections after the filing of said objections and such discovery shall be completed within 60 days after the filing of said objections; provided, that the time limits imposed may be extended by stipulation among the parties, or absent such stipulation, by order of the Court for good cause shown; and it is further

ORDERED that the costs allowed to plaintiffs against the defendants in the Court of Appeals amounting to five hundred and thirteen dollars and seventy-one cents (\$513.71) be made a judgment of this Court in favor of the plaintiffs against the defendants and that execution issue therefor;

EXHIBIT 8, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

And it appearing that plaintiffs have made a reasonable showing that they are likely to succeed in this action, it is further

ORDERED that the defendants are enjoined from employing counsel paid or to be paid with union funds; and it is further

ORDERED that this Court retains jurisdiction for the purpose of the carrying out of this Order.

DATED: New York, New York
July 6, 1970

DUDLEY B. BONSALE
United States District Judge

EXHIBIT 9, ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

*Figure 10 - New Pattern for
as of July 2, 1973*

*Figure 10 - New Pattern for
as of July 2, 1973*

LINE NO.	DATE	NAME	Total	Net
1	7/13	John J. Dwyer	57,013	57,013
2	7/13	"	10,713	10,713
3	7/13	"	12,432	12,432
4	7/13	"	23,190	
5	7/13	"	30,000	
6	7/13	"	5,000	
7	7/13	"	53,496	
8	7/13	John J. Dwyer	5,000	
9	7/13	"	7,931	
10	7/13	"	38,371	
11	7/13	John J. Dwyer	7,931	
12	7/13	"	12,656	
13	7/13	"	20,000	
14	7/13	"	5,000	
15	7/13	"	26,678	
16	7/13	John J. Dwyer	7,931	
17	7/13	"	11,551	
18	7/13	John J. Dwyer	8,911	
19	7/13	"	21,001	
20			21,001	21,001
21				
22				
23				
24				
25				
26				
27				
28				

[illegible]



AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JAMES M. MORRISSEY, JOSEPH PADILLA, :
RALPH IBRAHIM, *individually and on* :
behalf of the members of the NATIONAL :
MARITIME UNION OF AMERICA, :

Plaintiffs, :

-against- :

JOSEPH CURRAN, SHANNON WALL, :
WILLIAM PERRY, MARTIN SEGAL, :
ABRAHAM E. FREEDMAN and :
LEON KARCHMER, :

Defendants. :

AFFIDAVIT

69 Civ. 442

-----x

STATE OF NEW YORK)
 : ss. :
COUNTY OF NEW YORK)

Herman E. Cooper, being duly sworn, deposes and says:

1. I am the attorney for defendant, Leon Karchmer, am fully familiar with all the proceedings heretofore had herein, and make this affidavit in opposition to plaintiffs' application to hold Karchmer in contempt as having committed "willful violation" of an order made herein on July 6, 1970, by employing counsel allegedly "paid or to be paid with union funds."

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

2. *Plaintiffs would belatedly impose punitive sanctions against Karchmer by claiming civil contempt of a prohibitory and consequently coercive order. This comes after a final judgment which constituted ultimate judicial disposition on the merits of all elements of this litigation. Plaintiffs were thereby foreclosed from any right to thereafter seek a compensatory judgment based on an interim order encompassed in the terminated lawsuit. The ancient Latin maxim is still fresh: "debet esse finis litium".*

3. *But legal argument aside, the equities supporting denial of the relief sought are even more compelling since determination of this matter rests entirely in the sound discretion of the Court. Plaintiffs now charge Karchmer with contempt after their counsel consciously acquiesced, with actual or imputable knowledge, in a course of conduct openly pursued for more than three years. No timely efforts were made to enforce the "contempt", if such it was.*

4. *Plaintiffs idly stood by and did not even raise the question until the within application. There is a further indication of their minimal regard for this particular "contempt" proceeding as without merit or worth hot pursuit. Plaintiffs early elected as their remedy to institute and actively maintain a separate lawsuit, pending since January 11, 1973 in this Court (No. 73 Civ. 20). Inter alia they pleaded by paragraph "29" of that complaint:*

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

"The trustees, Leon Karchmer, Martin Segal and Abraham E. Freedman, did incur substantial expenses in their defense in the litigation entitled Morrissey, et al v. Curran et al, No. 69 Civ. 442, and in the enforcement proceedings against William Perry and Abraham E. Freedman and charged the same to their trust."

5. Nevertheless, and even assuming, arguendo, plaintiffs' technical entitlement to the claimed relief, they have, by their own acts and failures to act, waived and forfeited any equitable right to the monetary penalty sought against Karchmer. They have slept on such claims as might otherwise have effectively been asserted. For, it is straining credulity to believe that plaintiffs did not earlier know or even inquire as to whether counsel for the trustees were being compensated from the trust fund. This was not being done covertly or with intent to conceal. Can it be that plaintiffs' sophisticated counsel sought and obtained a significant restraining order without thereafter even trying to verify compliance — given his many opportunities to do so since July 6, 1970, including extensive intermediate depositions and interrogatories of defendants? Certainly, he revealed actual knowledge in January, 1973, that the legal fees were being paid from the "trust". It now comes with particular ill grace that counsel for plaintiffs implicitly also accuses counsel for the trustees with culpability

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

in their clients' "contempt", as knowing participants in violation of a court order, without having sounded any early cautionary signal that such a move was being contemplated, regardless of its lack of merit.

6. *But, even absent the foregoing factors, the pertinent questions relate to the subjects and objects of the order itself, as read and reasonably interpreted by the parties themselves in good faith. While plaintiffs' counsel by his brief disclaims wilfulness as an essential ingredient of contempt, his application reiterates the charge as "wilful violation".*

7. *This Court held two hearings which bore directly upon the scope and purpose of the order of July 6, 1970. On June 18, 1970 the concern was, in part, with the remand of the Court of Appeals calling for determination by the District Court of the question as to whether "defendants be enjoined from retaining counsel paid or to be paid with union funds". The Court limited consideration of the proposed restraint by the following:*

"In connection with the order itself, there is one point that I would like to discuss with you, and that is the representation of Mr. Freedman's office. I didn't pass on that question, and the Court of Appeals says I should and the Court of Appeals has directed me to pass on it."

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

At the hearing of September 22, 1970, as it related to the injunctive order of July 6, 1970, neither plaintiffs' counsel nor the Court gave any intimation that its application extended beyond Mr. Freedman and his union representation to the trustees in their fiduciary capacity. Nor at subsequent hearings and proceedings did any of the parties or their attorneys have any indication, until this application, that the trustees were also considered the subjects of the order and that their counsel fee payments from the trust fund constituted a violation of the order.

8. *Beyond any surmise or assumption, however, it is self-evident that the order contained no explicit judicial language to indicate that "union funds" meant other than the General Fund of the National Maritime Union as distinguished from the trust funds of the NMU Officers' Pension Plan. Plaintiffs' counsel himself consistently observed the distinction by the very formulation on this application of his claim for additional fees.*

*"The compensation for services and the reimbursement for expenses should be charged to the NMU General Fund and to the Officers' Pension Fund in the ratio of the benefits realized by them respectively."
(Point II - McInerney Affidavit)*

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

9. While the NMU contributed to the Plan's trust fund, the union was thereby divested of control and had no rights of disposition or reversion. The Agreement and Declaration of Trust between the NMU and the trustees, by V(i) provides in part:

'Notwithstanding anything to the contrary contained in this Agreement and Declaration, as now expressed or hereafter amended, it shall be impossible at any time for any part of the trust corpus or income to revert to the Union...'

10. The sharp distinction between "union funds" and the "trust fund" is further underscored by the decision on January 11, 1972 of this Court, which directed the defendant trustees of the NMU Officers' Pension Fund to pay from its trust funds to the National Maritime Union the sum of \$674,222.60, which only upon such transfer became "union funds". Consequently, the reference in the order to "union funds" was, at best, ambiguous, if not so narrowly circumscribed as to exclude other sources such as the "trust fund".

11. The trustees were not accountable in contempt for good faith construction of language which left grounds for doubt as to possible violation of the Court's order. Under any circumstances, the serious implications and consequences of violating a court's order require that such order be unambiguous and unmistakable in its purpose and application.

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

12. The language of the relevant parts of the order under consideration provides further grounds for non-penalization of Karchmer. The order was, by its terms, predicated upon the prefatory declaration: "And it appearing that plaintiffs have made a reasonable showing that they are likely to succeed in this action..." So that, again assuming, arguendo, that Karchmer was enjoined and that "union funds" included the trust fund, his ultimate exoneration on the evidence before the Trial Court, as upheld on appeal, takes him out of the category of a malefactor who flagrantly defied a judicial edict — and retrospectively negates the preliminary assumption upon which the order issued.

13. Nowhere in plaintiffs' application is there any shadow of proof that Karchmer intentionally committed any act, in retaining counsel paid from the trust fund, as defiance of judicial authority. In practical terms, the plaintiffs seek obliquely to modify and enlarge the final judgment in this case by imposing post-judgment liability on this defendant for the legal burden of his defense.

14. The plaintiffs do not even here assert that Karchmer was foreclosed from retaining counsel and making payments from other sources than "union funds". He had a right to do so from the trust fund. The Agreement and Declaration of Trust, by C(9) specifically provides:

"The Trustees shall be empowered to obtain and determine compensation for legal counsel...as they may, in their discretion, find necessary..."

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

15. The only issue raised by the within application as to the alleged contempt is necessarily limited to use of "union funds". It does not extend to payments to counsel of Karchmer or of the other defendant trustees by the Board of Trustees from the trust funds of the NMU Officers' Pension Plan as conflicting with the express order of July 6, 1970. The order did not make it so clear as to warrant compliance that neither fund could be drawn against for the defense of the trustees as individual defendants — only the "union fund".

16. Since the Trust Agreement, by Article C, Section 4 properly exculpated the trustees from "any loss or diminution of the Fund, except due to their own wilful misconduct", they had the concomitant right to be defended by counsel paid from the trust fund against such potential liability. The controlling fact is that Karchmer was judicially exonerated of "wilful misconduct" as a trustee. He was consequently relieved of an obligation to pay for his own defense. Had he initially advanced the onerous legal costs, his clear right under the circumstances to indemnification would have entitled him to be made whole from the trust fund by reason of his status as a trustee and personal exposure as a fiduciary. The New York Fiduciary Powers Act (EPTI. 11-1.1) specifically empowers trustees:

"(13) To contest, compromise or
or otherwise settle any claim in
favor of the estate, trust or

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

fiduciary or in favor of third
persons against the estate,
trust or fiduciary.

"(22) In addition to those expenses specifically provided for in this paragraph, to pay all other reasonable and proper expenses of administration from the property of the estate or trust, including the reasonable expense of obtaining and continuing his bond and any reasonable counsel fees he may necessarily incur." (emphasis added)

17. It is somewhat ironic that plaintiffs cavel at the retention by the trustees of Messrs. Botein, Hays, Sklar and Herzberg as independent counsel to effect collection of the Perry judgment in favor of the Trust Fund. Not only did plaintiffs' counsel constantly press for vigorous enforcement of this judgment but the trustees had no alternative, despite the surcharge judgment against Freedman. While Freedman had posted a supersedeas bond, the outcome of his appeal was unpredictable. The trustees would have been remiss, and plaintiffs would now so charge, had they not in the interim pursued the Perry judgment for collection. If Freedman's appeal had succeeded, the trustees would have been accused by these plaintiffs of "wilful misconduct" for failing to proceed as they did.

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JANUARY 30, 1974
IN OPPOSITION TO PLAINTIFFS' MOTION

18. As a further mark of defendant Karchmer's "contempt", plaintiffs contest the payments to Freedman's attorneys as violative of the order of July 6, 1970. However, such payments by the trustees were not made from "union funds", as interdicted, but from the separate and distinct funds of the NMU Officers' Pension Plan, as to which no judicial restraint similarly applied.

19. On this application, determination of whether contempt was committed by the trustees does not rest on the purpose of the payments or if they are justifiable in amount or should have been made. The thrust of the Court's order was not to the object but to the source of payments for defendants' counsel. Since "union funds" were not the source in any instance, the plaintiffs cannot support contempt against any of the defendants for the Freedman payments or other legal fees so made.

20. For all of the foregoing, affiant respectfully submits on behalf of defendant Karchmer that the within application to hold him in compensatory civil contempt is without merit and should be denied in the exercise of the Court's discretion.

(Sworn to by Herman E. Cooper, January 30, 1974.)

MEMORANDUM DECISION OF DUDLEY B. BONSALE U.S.D.J.
DATED MAY 1, 1974.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

DUER & TAYLOR, 74 Trinity Place, New York, N.Y. 10006,
Attorneys for Plaintiffs, Arthur E. McInerney, John S.
Chapman, Jr., Of Counsel.

BROMSEN, GAMMERMAN, ALTIER & WAYNE, 450 Seventh Ave.,
New York, N.Y. 10001, Attorneys for Defendants Curran
and Wall, By Joseph P. Altier.

SIMPSON, THACHER & BARTLETT, One Battery Park Plaza,
New York, N.Y. 10004, Attorneys for Defendant Segal, Roy
L. Reardon, Melvyn L. Cantor, Ronald L. Ginns, Of Counsel.

CHARLES SOVEL, 346 W. 17th St., New York, N.Y. 10011,
Attorney for Defendant Freedman.

HERMAN E. COOPER, 500 Fifth Avenue, New York, N.Y.
10036, Attorney for Defendant Karchmer.

BONSALE, D. J.

Plaintiffs move for an order: 1) directing that the
firm of Duer & Taylor be allowed and paid the sum of
\$42,716.22 for attorneys' fees and disbursements in con-
nection with appeals and petitions for writs of certiorari
occurring after the Court's November 15, 1972 award of
attorneys' fees and expenses to Duer & Taylor in the
amount of \$111,864.00; 2) directing that the firm of

MEMORANDUM DECISION OF DUDLEY B. BONSALE U.S.D.J.
DATED MAY 1, 1974

Duer & Taylor be allowed and paid an additional sum of attorneys' fees in the amount of \$72,000.00; 3) adjudging defendants Curran, Wall, Freedman, Karchmer, and Segal in contempt of this Court's order of July 6, 1970; and 4) directing that a judgment be entered against the National Surety Corporation in the amount of \$291,833.30.

In prior proceedings it has been determined that the 1960 constitution of the National Maritime Union of America ("NMU") did not authorize the inclusion of non-officers of NMU in the NMU Officers Pension Plan ("the Plan") and that NMU was entitled to recover from the Trustees of the Plan all amounts paid by NMU into the Plan for the account of non-officers, plus interest. *Morrissey v. Curran*, 302 F. Supp. 32 (S.D.N.Y. 1969), *aff'd in part and rev'd in part*, 423 F. 2d 393 (2d Cir.), *cert. denied*, 399 U. S. 928, *Segal v. Morrissey*, 400 U. S. 826 (1970). Accordingly, on February 18, 1972 judgment was entered in favor of NMU against the Plan in the amount of \$674,222.60 (representing \$520,283.38 paid by NMU to the Plan for the account of non-officers, plus interest in the amount of \$153,939.22), which judgment has been paid.

A hearing was later held to determine "the personal liability, if any, of the defendant trustees [of the Plan], Freedman, Segal and Karchmer, and officers [of NMU],

MEMORANDUM DECISION OF DUDLEY B. BONSALE U.S.D.J.
DATED MAY 1, 1974

Curran and Wall, to NMU for the monies which the Pension Plan has paid out to non-officers and which it is unable to recoup." By opinion filed on October 26, 1972 the Court found that trustee Freedman was subject to surcharge for the lump sum pension paid to William Perry (a non-officer), but that trustees Segal and Karchmer, who acted in reliance on Freedman's legal opinion, while negligent in doing so on the facts stated in the opinion, were not in willful violation of their duty as trustees nor were they acting in bad faith. Accordingly, they were not surcharged for the payment to Perry. *Morrissey v. Curran*, 351 F. Supp. 775 (S.D.N.Y. 1972). On November 15, 1972 judgment was entered in favor of the Plan and against Freedman in the principal amount of \$222,200.00 (being the amount of the lump sum payment to Perry, for which he was surcharged), together with interest in the amount of \$50,540.50 to date of the judgment, making a total of \$272,740.50. The Court also granted plaintiffs' attorneys (Duer & Taylor) an award for attorneys' fees and disbursements in the amount of \$111,864.00. *Morrissey v. Curran*, 351 F. Supp. 775 (S.D.N.Y. 1972), *aff'd*, 483 F. 2d 480 (2d Cir. 1973), *cert. denied*, 42 U.S.L.W. 3386 (U. S. Jan. 7, 1974).

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DATED MAY 1, 1974

On January 16, 1974, having exhausted his remedies on appeal, Mr. Freedman paid to the Plan \$288,860.00. Interest to January 16, 1974 on the judgment was \$19,092.80, which, if added to the amount of the judgment (\$272,740.50), makes a total of \$291,833.30, leaving a balance payable by Mr. Freedman of \$2,973.30. Since Mr. Freedman made payment promptly following the disposition of his appeals, no additional interest will be charged if he pays \$2,973.30 to the Plan on or before May 31, 1974. In view of the foregoing, there is no basis for resorting to the supersedeas bond issued by the National Surety Corporation, and plaintiffs' motion for judgment against the bonding company is denied.

Plaintiffs contend that since the trustees' attorneys' fees and disbursements in this litigation have been paid by the plan, the trustees should be held in contempt of this Court's order of July 6, 1970. Defendant Freedman, however, states in his affidavit of January 30, 1974 that he has personally paid his own attorneys' fees arising out of this litigation. Plaintiffs have produced no evidence that any of his attorneys' fees have been paid by the Plan. However, it appears that Messrs. Simpson Thacher & Bartlett have received attorneys' fees and disbursements in the

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amount of \$96,273.24* for representing trustee Segal and that Herman E. Cooper, Esq. has received attorney's fees and disbursements in the amount of \$62,859.61** for representing trustee Karchmer in this litigation, and that these amounts have been paid by the Plan. The issue posed, therefore, is whether a trustee who is found to be negligent, but who has not wilfully violated his duty or acted in bad faith, can charge his trust with attorneys' fees and disbursements incurred in his own defense. A review of the authorities as applied to the facts here (see 351 F. Supp. 775) satisfies the Court that he may not.

While a trustee is entitled to have the litigation expenses incurred in defending his trust paid by the trust estate, the trustee must personally bear litigation expenses caused by his own fault. See 3 A. SCOTT, THE LAW OF TRUSTS §188.4 (3d ed. 1967). As Professor Scott states:

"Even though the expense is incurred in preserving the trust estate, the trustee is not entitled to indemnity if the incurring of the

* This figure does not include approximately \$9,000 in accrued, but unbilled, legal time from June 30, 1973 to February 21, 1974, nor approximately \$2,000 in unreimbursed expenses for the same period.

** This figure does not include approximately \$8,500 for accrued, but unbilled, legal services rendered from June 30, 1973 to March 11, 1974, exclusive of disbursements.

MEMORANDUM DECISION OF DUDLEY B. BONSALE U.S.D.J.
DATED MAY 1, 1974

expense became necessary because of his own fault. Thus if the trustee negligently permitted a third person to obtain possession of the trust property, the expenses of the litigation which resulted must be borne by the trustee personally." 3 A. SCOTT, THE LAW OF TRUSTS §245 at 2155 (3d ed. 1967).

In *In re Caffrey's Will*, 254 App. Div. 684, 3 N. Y. S. 2d 443 (2d Dept. 1938), the court said:

"While upon this record no surcharge may be made, the manner in which the trust estate was handled demonstrates that the trustee was negligent in the manner in which it performed its duties and forfeited its right to receive any compensation or allowances." Id. at 444.

See also *In re Dalsimer's Will*, 251 App. Div. 385, 296 N. Y. S. 209 (1st Dept. 1937), *aff'd*, 277 N. Y. 717 (1938).

Similarly, in cases under the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§401 et seq., it has been held that the funds of a union are not available to defend officers, who are fiduciaries, charged with acts detrimental to the union and its membership.

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DATED MAY 1, 1974

Kerr v. Shanks, 466 F. 2d 1271, 1277 (9th Cir. 1972);
Filone v. English, 306 F. 2d 814, 817 (D.C. Cir. 1962);
Highway Truck Drivers and Helpers Local 107 v. Cohen,
215 F. Supp. 938 (E. D. Pa. 1963), *aff'd*, 334 F. 2d
378 (3d Cir.), *cert. denied*, 379 U. S. 921 (1964);
Highway Truck Drivers and Helpers Local 107 v. Cohen,
182 F. Supp. 608 (E. D. Pa. 1960), *aff'd*, 284 F. 2d
162 (3d Cir.), *cert. denied*, 365 U. S. 833 (1961).

Here, Mr. Segal testified that the lump sum payment to Perry was unique in his extensive experience as an expert in the pension field, and he told of the pressure that was applied on the trustees on January 16, 1969. Mr. Karchmer was put on inquiry the previous December and testified that the Perry payment was the first of its kind and the largest payment ever made by the Plan, and processed faster than any other. In negligently processing the lump sum payment to Perry, they were clearly at fault, and their fault was responsible for the Plan's involvement in this litigation. However, plaintiffs have provided no basis for holding any of the trustees of the Plan in contempt of this Court's order of July 6, 1970, and their motion to do so is denied. Nevertheless, Messrs. Segal and Karchmer should reimburse the Plan for the amounts of their respective

MEMORANDUM DECISION OF DUDLEY B. BONSAI U.S.D.J.
DATED MAY 1, 1974

attorneys' fees and disbursements paid by the Plan. A review of the voluminous documents in this case does not disclose that defendants Curran and Wall are in contempt of this Court's order of July 6, 1970, and plaintiffs' motion to hold them in contempt is denied.

Plaintiffs' attorneys seek additional attorneys' fees and disbursements; (1) \$42,716.22 for services rendered in connection with the appeals and petitions for writs of certiorari from the Judgment filed November 15, 1972, and (2) \$72,000 additional attorneys' fees, being approximately 25% of the recovery by the Plan from Mr. Freedman. The application for attorneys' fees in the amount of \$72,000 is denied since the value of the services rendered by plaintiffs' attorneys in the recovery of the above amount from Mr. Freedman was included in the prior award to plaintiffs' attorneys in the amount of \$111,864.00.

As to the application by plaintiffs' attorneys for \$42,716.22 attorneys' fees and disbursements in connection with the appeals, a hearing will be held on a date to be fixed in the order to be entered herein, at which plaintiffs' attorneys may prove their attorneys' fees

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DATED MAY 1, 1974

under the guidelines laid down by the Court of Appeals
in *City of Detroit v. Grinnell Corp.*, F. 2d ,
Dkt. Nos. 73-1211, 73-1420 (2d Cir., slip op. filed
March 13, 1974).

Settle order on notice.

DATED: New York, N.Y.
May 1, 1974

DUDLEY B. BONSALE
U. S. D. J.

PLAINTIFFS' NOTICE OF MOTION DATED MAY 3, 1974
FOR REARGUMENT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

SIRS:

PLEASE TAKE NOTICE that the plaintiffs will move this Court on May 13, 1974 at 9:30 a.m. in the Federal Courthouse, Room 618, (Hon. Dudley B. Bonsal, U.S.D.J.) pursuant to Rule 9 of the General Rules of this Court for reargument of those parts of the Memorandum Decision of May 1, 1974 herein that failed to find the defendants Freedman, Curran and Wall in contempt of the order of July 6, 1970 and failed to direct judgment against the said defendant Freedman in favor of the NMU Officers' Fund in the sum equal to the total payments made out of the said Fund in his defense as a trustee of the said Fund, together with whatever other further and different relief the Court deems just and proper in the circumstances.

DATED: New York, New York
May 3, 1974

Yours, etc.

DUER & TAYLOR

By Arthur E. McInerney,
A Member of the Firm
Attorneys for Plaintiffs
Office & P.O. Address
74 Trinity Place
New York, New York 10006
(212) 944-7482

PLAINTIFFS' NOTICE OF MOTION DATED MAY 3, 1974
FOR REARGUMENT

TO:

BROMSEN, GAMMERMAN, ALTIER & WAYNE
450 Seventh Avenue
New York, New York 10001
Attorneys for Defendants Curran and Wall

SIMPSON, THACHER & BARTLETT
One Battery Park Plaza
New York, New York 10004
Attorneys for Defendant Segal

CHARLES SOVEL, ESQ.
346 West 17th Street
New York, New York 10011
Attorney for Defendant Freedman

HERMAN E. COOPER, ESQ.
500 Fifth Avenue
New York, New York 10036
Attorney for Defendant Karchmer

NOTICE OF MOTION OF DEFENDANT MARTIN E. SEGAL
DATED MAY 13, 1974 FOR REARGUMENT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

SIRS:

PLEASE TAKE NOTICE that, pursuant to Rule 9(m) of the General Rules of this Court, defendant Martin E. Segal will move, at 9:30 A.M. on May 20, 1974, in the Courthouse, Room 618:

(a) for reargument of the Court's memorandum decision of May 1, 1974 insofar as that decision requires him to reimburse the N. M. U. Officers' Pension Fund in the amount of \$96,273.24; and

(b) for such other and further relief as to this Court seems just and proper.

Defendant Segal respectfully requests that the Court consider the affidavit of Roy L. Reardon which accompanies

NOTICE OF MOTION OF DEFENDANT MARTIN E. SEGAL
DATED MAY 13, 1974 FOR REARGUMENT

this Notice of Motion since Mr. Segal has not previously
had the opportunity to bring the matters contained in
the affidavit to the attention of the Court.

DATED: New York, New York
May 13, 1974

Yours, etc.,

SIMPSON THACHER & BARTLETT

By Roy L. Reardon
A Member of the Firm
Attorneys for Defendant
Martin E. Segal
Office and P.O. Address
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

TO:

MESSRS. DUER & TAYLOR
74 Trinity Place
New York, New York 10006

MESSRS. BROMSEN, GAMMERMAN, ALTIER & WAYNE
450 Seventh Avenue
New York, New York 10001

CHARLES SOVEL, ESQ.
345 West 17 Street
New York, New York 10011

HERMAN E. COOPER, ESQ.
500 Fifth Avenue
New York, New York 10036

AFFIDAVIT OF ROY L. REARDON IN SUPPORT OF MOTION OF
DEFENDANT MARTIN E. SEGAL FOR REARGUMENT

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

State of New York,
County of New York, ss:

ROY L. REARDON, being duly sworn, deposes and says:

1. I am a member of the firm of Simpson Thacher & Bartlett, attorneys for defendant Martin E. Segal in the above-referenced matter and am fully familiar with all the matters hereinafter set forth. I make this affidavit in support of Mr. Segal's motion for reargument and respectfully request that the Court consider this affidavit in light of the fact that Mr. Segal has not previously been given the opportunity to bring to the Court's attention the matters contained herein.

2. This motion for reargument is directed at that portion of the Court's memorandum decision of May 1, 1974 which directed Mr. Segal to repay to the N. M. U. Officers' Pension Fund attorneys' fees and disbursements in the amount of \$96,273.24. Mr. Segal's motion for reargument is twofold: First, he respectfully submits that this Court erred in its holding that, on the facts here, the Fund should not be required to pay Mr. Segal's legal fees and disbursements in connection with this litigation. The facts supporting Mr. Segal's position

AFFIDAVIT OF ROY L. REARDON IN SUPPORT OF MOTION OF
DEFENDANT MARTIN E. SEGAL FOR REARGUMENT

in this regard are already of record and will be discussed at some length in the memorandum of law which accompanies his motion.

3. Mr. Segal's second ground for reargument is that, even if the Court should fail to reconsider the underlying theory of its May 1, 1974 decision, it nevertheless is in error in holding that Mr. Segal must return to the Fund the amount of \$96,273.24. It is this latter question that I should like to address myself to in detail in this affidavit.

4. As this Court is aware, after this action was commenced in February of 1969, Simpson Thacher & Bartlett was retained to represent not only Mr. Segal, but Leon Karchmer as well. Our representation of both Mr. Segal and Mr. Karchmer continued until late December 1970, at which point Mr. Cooper was substituted as Mr. Karchmer's attorney. Indeed, even after December 1970, this firm spent some time assisting Mr. Cooper and his associate, Carl Goodman, in familiarizing themselves with this matter.

5. Of the \$96,273.24 that this firm has been paid, \$28,922.26 was for its representation of both Mr. Segal and Mr. Karchmer through December 31, 1970. Should the Court fail to reconsider its decision of the merits,

AFFIDAVIT OF ROY L. REARDON IN SUPPORT OF MOTION OF
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Mr. Segal respectfully submits that in any event, a re-allocation must be made with respect to this \$28,922.26.

6. Moreover, as this Court is also well aware, from the inception of this lawsuit until this very day, there have been numerous legal issues presented. As we understand it, the theory of the Court's May 1 decision with respect to Mr. Segal is that since the Court found him to be negligent with respect to the Perry payment, he must reimburse the Fund for the legal fees which it expended. However, a substantial percentage, perhaps even a majority of this firm's time in this litigation was spent in connection with matters having nothing to do with the Perry situation and I respectfully submit to this Court that under no theory should Mr. Segal be required to reimburse those legal fees to the Fund.

7. For instance, one of the major, perhaps the most significant issue throughout this entire litigation has been the amount of money properly to be returned by the Fund to the N. M. U. treasury with respect to "non-officers". Thus, in its representation of Messrs. Segal and Karchmer initially and Mr. Segal at later stages in this litigation, this firm expended substantial amounts of time (a) gathering information for and preparing answers to interrogatories; (b) helping

AFFIDAVIT OF ROY L. REARDON IN SUPPORT OF MOTION OF
DEFENDANT MARTIN E. SEGAL FOR REARGUMENT

to prepare accountings presented to the Court; (c) preparing for and attending pre-trial conferences and the hearing in August of 1971 with respect to the question of the amount of money to be returned by the Fund to the N. M. U.; (d) briefing and arguing this issue in the United States Court of Appeals; and (e) opposing plaintiff's Petition for a Writ of Certiorari with respect to this issue. Mr. Segal's efforts in this regard were successful to the extent that the Fund was depleted by approximately \$1,000,000 less than the amount sought by plaintiffs.

8. In addition, as this Court no doubt remembers, plaintiffs spent a great deal of time in determining which of the various payments out of the Fund to challenge and in that connection, we were caused to spend a substantial amount of time reviewing and producing numerous documents (covering a decade or more of payments) having nothing to do with the Perry situation. The Court finally determined that four payments should be set down for hearing as to personal liability, that to Mr. Perry and also those to Messrs. Brauch and Tevan and Mrs. Laderhandler. The Brauch, Tevan and Laderhandler payments were in excess of \$150,000 and obviously merited serious attention on our part.

AFFIDAVIT OF ROY L. REARDON IN SUPPORT OF MOTION OF
DEFENDANT MARTIN E. SEGAL FOR REARGUMENT

9. Thus, of the \$96,273.24 paid to this firm in legal fees and disbursements, almost \$29,000 was paid on behalf of our dual representation of Messrs. Segal and Karchmer and a division of this amount is obviously in order. In addition, substantial amounts of time were spent throughout the entire history of this litigation in connection with matters having nothing to do with the matter for which Mr. Segal was found to be negligent in relying on the opinion of Abraham E. Freedman, and indeed Mr. Segal's conduct and that of his attorneys with respect to minimizing, to the extent possible, the depletion of the Fund has saved the Fund approximately \$1,000,000. Mr. Segal respectfully submits to this Court that it would be totally inequitable for him to have to bear these portions of our fees and disbursements. Therefore, should the Court refuse to reconsider its decision on the merits, it would seem most appropriate either to hold a hearing, or to refer to a special master, the question of the appropriate allocation of the fees and disbursements.

10. Finally, I should like to say a brief word about plaintiffs' totally unwarranted attack on the Trustees' having retained Judge Botein to seek collection

AFFIDAVIT OF ROY L. REARDON IN SUPPORT OF MOTION OF
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of the judgment entered against Mr. Perry. As this Court may remember, Judge Bottein was retained prior to the surcharge of Mr. Freedman and after the efforts of another attorney proved unsuccessful. At that point in time, it was obviously incumbent upon the trustees to do everything in their power to collect the judgment against Perry. Moreover, even after this Court's judgment surcharging Mr. Freedman, it was still incumbent upon the Trustees to pursue Mr. Perry until Mr. Freedman had exhausted all avenues of appeal and had paid the judgment. Indeed, it is more than a little ironic for plaintiffs to complain about counsel fees expended in connection with attempting to collect the Perry judgment; one can only imagine what plaintiffs' position would be had the trustees not attempted to recover from Perry.

11. For all the reasons set forth above and in the accompanying memorandum of law, I respectfully submit that this Court should grant Mr. Segal's motion and rule that, upon the facts presented here, Mr. Segal need not reimburse the Fund for any of the attorneys' fees and disbursements incurred in connection with this litigation. Alternatively, I respectfully submit that the question

AFFIDAVIT OF ROY L. REARDON IN SUPPORT OF MOTION OF
DEFENDANT MARTIN E. SEGAL FOR REARGUMENT

of the appropriate allocation of Mr. Segal's attorneys' fees with respect to the Perry matter be referred to a special master or set down for hearing before this Court.

(Sworn to by Roy L. Reardon, May, 1974.)

NOTICE OF MOTION OF DEFENDANT LEON KARCHMER
DATED MAY 9, 1974 FOR REARGUMENT.

S I R S:

PLEASE TAKE NOTICE that the defendant Leon Karchmer will move this Court on May 20, 1974 at 9:30 a.m. in the Federal Court-house, Room 618, (Hon. Dudley B. Bonsal, U.S.D.J.) pursuant to Rule 9 of the General Rules of this Court for reargument of those parts of the Memorandum Decision of May 1, 1974 herein that found the defendant Leon Karchmer to be negligent in processing the lump sum payment to Perry and that said defendant should reimburse the NMU Officers Pension Plan for the amount of his attorneys' fees and disbursements paid by the Plan, together with whatever other further and different relief the Court deems just and proper in the circumstances.

Dated: New York, New York
May 9, 1974

Yours, etc.

HERMAN E. COOPER

By Herman E. Cooper
Herman E. Cooper
Attorney for Defendant
Leon Karchmer
Office & P. O. Address
500 Fifth Avenue
New York, New York 10036
(212) 354 - 1520

NOTICE OF MOTION OF DEFENDANT LEON KARCHMER
DATED MAY 9, 1974 FOR REARGUMENT

TO: *DUER & TAYLOR*
74 Trinity Place
New York, New York 10006
Attorneys for Plaintiffs

BROMSEN, GAMMERMAN, ALTIER & WAYNE
450 Seventh Avenue
New York, New York 10001
Attorneys for Defendants Curran and Wall

SIMPSON THACHER & BARTLETT
One Battery Park Plaza
New York, New York 10004
Attorneys for Defendant Segal

CHARLES SOVEL, ESQ.
346 West 17th Street
New York, New York 10011
Attorney for Defendant Freedman

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

State of New York,

County of New York, ss:

ROY L. REARDON, being duly sworn, deposes and says:

1. I am a member of the firm of Simpson Thacher & Bartlett, attorneys for defendant Martin E. Segal in the above-referenced matter and am fully familiar with all the matters hereinafter set forth, having been in overall charge of the case since its inception. I make this Supplemental Affidavit to advise the Court and counsel as to the reasonable allocation of our fees and disbursements which have been paid in this matter by the NMU Officers' Pension Fund. This Affidavit is, of course, without prejudice to Mr. Segal's position on his motion for reargument that he is entitled to complete reimbursement by the Pension Fund of his legal fees and disbursements since the surcharge claims against him were dismissed by the Court.

2. As the Court is aware, this lengthy and complex litigation has involved numerous issues of major and minor importance. However, I think it fair to state that the two ultimate issues presented to this Court and the Court of Appeals have been:

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

(a) The amount of money to be returned by the Pension Fund to the NMU Treasury representing contributions by the Union on behalf of "non-officers".

(b) The personal liability, if any, of the defendants with respect to certain payments made out of the Pension Fund to "non-officers".

3. Throughout this litigation, the great bulk of our time has been spent, either directly or indirectly, in dealing with one or the other of these two issues. What I have done, by analysis of our time records and litigation files, is break down the four and one-half years covered by our statements in this matter (from the commencement of the action in February, 1969 through June 30, 1973, immediately following the second Court of Appeals decision) into five segments and present to the Court my analysis as to the appropriate allocation with respect to each such period of time. Since neither our time records nor the issues lend themselves to precise arithmetical determination, my calculations represent my opinion, with a reasonable degree of certainty, based upon my knowledge of the case and the work which my firm performed.

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

PHASE I - FROM THE COMMENCEMENT OF THE ACTION THROUGH
FEBRUARY 20, 1970 (THE DATE OF THE FIRST COURT
OF APPEALS DECISION):

4. The first logical time period appears to me to be from the commencement of this action through the date of the first Court of Appeals decision. According to our records, we expended, during this period, a total of 52-1/2 hours of partners' time and 443 hours of associates' time in connection with the following principal activities:

(a) review of the complaint and order authorizing this action and other preliminary matters;

(b) preparation of the answers of Messrs. Segal and Karchmer;*

(c) preparation of an affidavit in opposition to plaintiffs' cross-motion for summary judgment;

(d) preparation of Mr. Segal's affidavit in support of his motion for reargument of this Court's initial decision;

(e) legal research for the preparation of briefs in connection with

* As the Court will remember, we represented Mr. Karchmer (as well as Mr. Segal) from the commencement of this action until late December, 1970.

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

- (i) the motion for reargument,
- (ii) a motion to strike plaintiffs' interrogatories on jurisdictional grounds (while the matter was pending in the Court of Appeals), and
- (iii) the appeals and cross-appeals from this Court's initial decision;
- (f) preparation for and attendance at oral arguments and pre-trial conferences in this Court and the oral argument in the Court of Appeals;
- (g) various meetings and conferences with our clients, co-counsel and opposing counsel; and
- (h) other related matters.

5. Examination of the various papers filed with this Court and the Court of Appeals and also, examination of our time records for this first phase, demonstrates that very little work during this period was done specifically with regard to the question of personal liability. That is to say, the great bulk of our research and other preparations was done with respect to the jurisdictional issues presented - whether a trustee was a proper party in this suit and whether this Court, in granting plaintiffs' motion for summary judgment, had exceeded the scope of Judge Bryant's order authorizing this action - and also with respect to the issues of

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

the proper construction of the Union constitution and the proper application of Rule 56 of the Federal Rules of Civil Procedure. However, as I noted at the outset, the question of personal liability was certainly one of the two major issues ultimately presented and determined by this litigation and therefore, it would seem appropriate to make the following allocation with respect to our total hours during this period:

Total hours	495.50
Hours relating to personal liability (50%)	247.75
Perry portion of personal liability	
$\frac{222,200}{371,271} \times 247.75$	148.25*

- * The Perry portion of personal liability is calculated on the following basis: in this Court's opinion of January 11, 1972, the Court determined that the defendants were potentially liable for the following payments to "non-officers":

William Perry	\$222,200
Sarah Ladehandler	9,201
James Tevan	12,799
Sophia Tevan	11,561
Irving Brauch	<u>115,510</u>
	<u>\$371,271</u>

Thus, what I have done is to make a sub-allocation with respect to the question of personal liability, whereby I have allocated as Perry hours that percentage of the total personal liability hours which is equal to Perry's percentage of the total potential personal liability.

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

PHASE II - FEBRUARY 21, 1970 THROUGH JANUARY 11, 1972
(THE DATE OF THIS COURT'S DECISION WITH RESPECT
TO THE ACCOUNTING ISSUES):

6. The next logical period for analysis appears to me to commence the day after the first Court of Appeals decision and to conclude on January 11, 1972, which was the date of this Court's decision with respect to the accounting issues in this case. During this period, we expended a total of 54 partners' hours and 749-1/2 associates' hours; the bulk of our time was spent in connection with the following matters:

(a) research for and preparation of briefs with respect to

(i) an application for rehearing in the Court of Appeals,

(ii) a motion to recall the mandate of the Court of Appeals, and

(iii) a petition for writ of certiorari in the Supreme Court;

(b) discovery proceedings in this matter, which covered both the accounting questions with respect to the return of funds to the Union which had been contributed on behalf of "non-officers" and also the questions of personal liability;

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

- (c) work on various pre-trial orders;
- (d) attendance at various pre-trial conferences and trial on the accounting issues in August, 1971;
- (e) preparation of a brief in opposition to Perry's motion to dismiss;
- (f) substantial legal research;
- (g) numerous meetings with Mr. Segal, co-counsel and opposing counsel; and
- (h) other related matters.

7. During this period, for the first time, a substantial portion of our research focused directly on the question of the potential personal liability of Mr. Segal as a trustee. In addition, a good portion of the discovery procedures were directed specifically toward the question of personal liability. On the other hand, analysis of our time records and litigation files reveals that an equally substantial portion of time was expended during discovery purely on the accounting issues with respect to the appropriate amount to be returned by the Pension Fund to the NMU Treasury. Finally, a good portion of our time was spent on legal research in connection with issues that bore both on the question of personal liability and on the question of the return of funds

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

from the Pension Fund to the Union. For example, the work done in connection with Mr. Segal's petition for a writ of certiorari, which was substantial, dealt with the following questions:

(a) Whether a federal court may substitute its interpretation of a union constitution for that of the union officers;

(b) The appropriate application of summary judgment principals on the facts in this case;

(c) Whether an "outside" trustee such as Mr. Segal was even subject to this Court's jurisdiction; and

(d) The correct interpretation of Rule 35(b) of the Federal Rules of Appellate Procedure.

8. Analysis and evaluation of all these matters leads me to conclude that in this second phase of the litigation an appropriate allocation would be, once again, 50% to the question of personal liability and 50% to other matters. This would break down as follows:

Total hours		803.50
Hours relating to personal liability (50%)		401.75
Perry portion of personal liability		
<u>222,200</u>	x 401.75	240.50
<u>371,271</u>		

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

PHASE III - JANUARY 12, 1972 THROUGH JUNE 29, 1972
(THE DATE OF THIS COURT'S DECISION WITH RESPECT
TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT
AT THE END OF PLAINTIFFS' CASE):

9. The next logical time period commences the day after this Court's decision with respect to the accounting issues and concludes with this Court's decision dismissing the complaint with respect to all issues except the payment to Perry. During this period, we expended 37-3/4 hours in partners' time and 331-1/2 hours of associates' time or a total of 369-1/4 hours. Of course, during this period our time was devoted in very large measure to the question of personal liability but there were certain other matters for which we expended some time, to wit:

- (a) review of various motions to reargue and preparation of opposition to plaintiffs' motion;
- (b) review of the various orders presented with respect to the accounting issues;
- (c) review of plaintiff's fee application;
- (d) draft of letters and other matters in connection with the return of funds by the Pension Fund to the NMU Treasury;
- (e) meetings with Mr. Segal; and
- (f) other related matters.

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

Review of all of these matters indicates that the following allocation should be made:

Total hours	369.25
Hours relating to personal liability (90%)	332.25
Perry portion of personal liability	
$\frac{222,200}{371,271} \times 332.25$	199

PHASE IV - JUNE 30, 1972 THROUGH OCTOBER 27, 1972
(THE DATE OF THIS COURT'S DECISION WITH RESPECT TO THE PERRY PAYMENT):

10. As the Court would expect, during this next period our concern was focused almost entirely on Mr. Segal's potential personal liability with respect to the Perry payment, although there were a few other miscellaneous matters, including principally conferences with Judge Botein and his partner, Mr. List, with respect to their activities on behalf of all the trustees in the supplementary proceedings against Mr. Perry.

11. During this period, we expended a total of 26 hours of partners' time and 92-1/4 hours of associates' time or a total of 118-1/4 hours. The following allocation seems appropriate:

Total hours	118.25
Perry hours (95%)	112.25

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

PHASE V - OCTOBER 28, 1972 THROUGH JUNE 30, 1973:

12. The next logical period would appear to commence on October 28, 1972 and carry through June 30, 1973, which was the last day for which we have rendered a statement in this matter.* During this period, we expended a total of 12-1/2 partners' hours and 124-3/4 associates' hours, or a total of 137-1/4 hours. During this period, we were involved principally with the following matters:

(a) settlement of an order with respect to this Court's decision of October 27, 1972;

(b) meeting with co-counsel and opposing counsel in connection with a joint appendix on the various appeals that were taken from this Court's decision;

(c) research for and preparation of a brief in the Court of Appeals; and

(d) preparation for and argument in the Court of Appeals.

13. The bulk of our time during this period was obviously spent in connection with the appeal, and an

* As of April 30, 1974, we had accrued approximately \$9,000 in unbilled legal time and slightly more than \$2,000 in unreimbursed expenses in connection with this matter. Since this work is ongoing, I would submit to the Court that whatever decision is ultimately reached on the paid portion of our total fees and disbursements should govern the unpaid portion as well.

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

examination of our brief and other related matters demonstrates that there were principally three issues on the appeal insofar as Mr. Segal was concerned:

(a) the correctness of this Court's determination with respect to the amount of money to be returned by the Pension Fund to the Union treasury;

(b) the question of personal liability, this time limited to Perry and Brauch (plaintiffs having foresaken any claim with respect to Ladehandler and the Tevans); and

(c) the question of whether plaintiffs' fee should be paid in whole or in part, by the Pension Fund.

14. Once again, an allocation of 50% to personal liability and 50% to other matters seems appropriate. Therefore:

Total hours		137.25
Hours relating to personal liability		68.75
Perry portion of personal liability		
<u>222,200</u>	x 68.75	45.25*
337,710		

* Since plaintiff made no claim on appeal with respect to either Ladehandler or Tevan, I have removed the payments to them from the calculation of the percentage attributable to Perry.

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

SUMMARY:

15. To recapitulate briefly, the following schedule summarizes the total hours spent in each of the periods described above and the total number of those hours allocable to the Perry matter:

	<u>Total</u>	<u>Perry</u>
Phase I	495.50	148.25
Phase II	803.50	240.50
Phase III	369.25	199.00
Phase IV	118.25	112.25
Phase V	137.25	45.25
	<u>1,923.75</u>	<u>745.25</u>

16. Thus, time allocated to Perry is 745.25 hours of a total of 1,923.75 hours or 39%. To arrive at the dollar amount of our fees and disbursements to be borne by Mr. Segal (under the theory of this Court's opinion of May 1, 1974) the following additional calculation must be made. Of the \$96,273.24 paid by the Pension Fund for our legal fees and disbursements, \$28,922.26 was for our joint representation of Messrs. Karchmer and Segal from the commencement of the action until late December, 1970. Thus, one-half of \$28,922.26 (or \$14,461.13) should be deducted at the outset as not expended on behalf of Mr. Segal. Therefore:

Total fees and disbursements in representing Mr. Segal	\$81,812.11
Portion attributable to Perry payment (39%)	\$31,906.72

SUPPLEMENTAL AFFIDAVIT OF ROY L. REARDON

17. In conclusion, I would once again urge the Court to reconsider its May 1, 1974 decision on the merits and hold that Mr. Segal need not reimburse the Fund for a successful defense to an attempted surcharge. However, should the Court fail to reconsider, I submit that the maximum that Mr. Segal should be asked to repay is \$31,906.72, which is the amount expended in defense of his approval of the Perry payment.

(Sworn to by Roy L. Reardon, June 4, 1974.)

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

State of New York,

County of New York, ss:

Arthur E. McInerney, being duly sworn, deposes
and says:

I am a member of the firm of Duer & Taylor, attorneys for the plaintiffs herein, and make this affidavit (1) in reply to the supplemental affidavit of Roy L. Reardon sworn to the 4th day of June, 1974, and (2) to report my efforts to reach an agreement relating to what attorneys' fees were properly chargeable to the NMU Officers Pension Fund (Fund).

EFFORTS TO SETTLE THE ISSUE: WHAT PART, IF ANY, OF
DEFENDANT-TRUSTEES' ATTORNEYS' FEES ARE CHARGE-
ABLE TO THE OFFICERS FUND:

This affidavit is designed to promote a settlement, and, as such, is made without prejudice to plaintiffs' position that none of the defendants' fees is payable from the Fund. In other words, it is aimed at buying peace for the Fund and made without admitting any liability.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

Mr. Karchmer has brought Exhibit 9 down to date.

The fees paid out of the fund are:

Fees for Segal & Karchmer	\$28,922.26
Fees for Segal	72,730.43
Fees for Karchmer	65,991.76
Fees for Freedman	85,829.11
Fees for Supp. Pro. against Perry (Botein, Hays, Sklar & Herzberg)	29,611.49
Fees for Weil, Gotshal & Manges	5,251.15
Fees for Willkie, Farr & Gallagher	7,059.84

In addition Simpson, Thacher & Bartlett and Herman E. Cooper have accrued but not billed in excess of \$19,500.00.

The total to date is therefore in excess of \$314,896.04.

In the first place, plaintiffs do not dispute that the legal services described were rendered in this complex and extended litigation. Nor do the plaintiffs raise any questions relating to the quality of the services rendered by the attorneys for the several defendants. The problem is: What, if any, portion should be paid by the Fund and what portion should be paid by the individual defendants?

Mr. Segal's lawyers, Simpson, Thacher & Bartlett, were led in this fierce litigation by Whitney North Seymour and his partner Roy L. Reardon, Brahmins of the Bar, ably supported by a plethora of associates.

REPLY AFFIDAVIT OF ARTHUR E. McINERNEY

Mr. Karchmer's defense attorneys, Surrey, Karasik, Morse & Seham, were headed up by Herman E. Cooper, an acknowledged expert in the field of labor law and formerly general counsel for the NMU, and he too was assisted by other capable members and associates of his firm.

Messrs. Curran, Wall and Freedman (and Perry) were ably represented by Abraham E. Freedman until he was removed as counsel and thereafter by the firm of Bloom and Epstein. That representation continued until the judgment of November 15, 1972 was entered. Harold Epstein particularly demonstrated his skill in presenting their defense. He too had several able assistants.

After November 15, 1972 Judge Rifkind appeared in the Court of Appeals for Mr. Freedman. Plaintiffs do not know how much Judge Rifkind has been paid for that representation nor the source of such payment.

Thereafter two of Mr. Freedman's partners petitioned the Supreme Court of the United States for a writ of certiorari. That representation was clearly contrary to the order of July 6, 1970.

When Bloom and Epstein departed from the scene, they petitioned the Supreme Court of the United States for a writ of certiorari. That representation was clearly contrary to the order of July 6, 1970.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

When Bloom and Epstein departed from the scene, the defendants Curran and Wall engaged other counsel, Bromsen, Gammerman, Altier & Wayne. Plaintiffs do not know what charges were made for that representation nor do they know the source of those payments.

It is respectfully suggested that such facts together with the supporting documents should be disclosed to assure that there was compliance with the order of July 6, 1970.

One of the many reasons for my concern about the source of the payments of the legal fees for Messrs. Curran, Wall (Bloom and Epstein; and Bromsen, Gammerman, Altier & Wayne) and Freedman (Judge Rifkind and his firm) may be gleaned from the method by which Mr. Perry said his legal fees were handled after the order of July 6, 1970. The tale of that unsavory transaction is set forth in detail in Mr. Perry's affidavit sworn to the 30th day of October, 1972, submitted on a motion to punish Mr. Perry for contempt in the proceedings supplemental to judgment (a relevant portion of that affidavit of this subject is annexed hereto, made a part hereof and marked Exhibit A).

Before the proposed settlement negotiation is explored, it should be observed that plaintiffs do not

REPLY AFFIDAVIT OF ARTHUR E. McINERNEY

claim that any of the defendants' attorneys should not be paid in the full amounts requested. But the plaintiffs' position is that the defendants are all financially responsible. Each is well able to "foot his own" legal bill.

The ingenious arguments and opinions set forth in the Reardon affidavit (*supra*, p. 1) breaks the work down to various phases.

After an examination of the time sheets, I am sad to say that that affidavit appears to be more fanciful than factual. To say the very least many crucial facts are omitted from it.

The trustees - all of them - had a clear duty not to make the Perry payment. But they made it.

The trustees - all of them - had a clear duty to pursue Perry and recoup the payment, but they never made any real effort to do so (until they knew it was too late).

Even after the Court had found the Perry payment unlawful, the trustees did nothing to sustain that finding.

The best example of this is that none of the trustees filed a brief in opposition to either the Freedman or Perry petitions for writs to the Supreme Court of the United States.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

In short, they did nothing to sustain their trust. All that work was successfully done by plaintiffs' attorneys.

In fact, the disloyalty of all the trustees did not stop there.

They knew that over \$115,000 had been paid to Mr. Brauch, a non-officer and a man who had never been a member of the NMU in April, 1966. They know when this Court entered a judgment in 1969 that all payments to non-officers had been unlawful and that appropriate steps could be taken against Mr. Brauch (a non-officer) to protect their trust. Yet they did nothing for three years, thereby allowing the statute of limitations to run against their trust. Now, Mr. Reardon says that a portion of the Simpson, Thatcher & Bartlett fee should be charged to the trust because Mr. Segal was not surcharged for allowing that statute to run out.

That, it seems to me, is adding insult to injury.

But let us examine the Curran, Wall and Freedman situation.

On July 6, 1970 this Court entered an order which provided in applicable part:

"The defendants are enjoined from employing counsel paid or to be paid with union funds."

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

Thereafter the defendants Curran, Wall and Freedman engaged Bloom and Epstein to represent them. Bloom and Epstein initially billed the trust \$51,803.37 for the services rendered by them to Freedman (See Exhibit 9). That bill was paid.

Thereafter on or about November 22, 1972 Bloom and Epstein submitted an additional bill to Mr. Freedman for services rendered to him in the sum of \$56,709.56. He turned that bill over to his co-trustees on or about November 30, 1972 to be paid out of the Officers Fund. In other words, the Bloom and Epstein bills to Mr. Freedman totaled \$108,513.93 for the comparatively short time they were in the case. They did not enter an appearance until after the completion of the first round of appeals and they were not in the case during the second round.

It has not been revealed how much additional if anything Bloom and Epstein billed Messrs. Curran and Wall. If there were no bill from Bloom and Epstein to Messrs. Curran and Wall, it is suggested that there was a clear violation of the order of July 6, 1970.

Apparently the trustees balked at paying Bloom and Epstein the additional \$56,709.56. After all, by that time, despite the expertise displayed by Mr. Freedman's attorneys, Mr. Freedman had been held to have been "recklessly indifferent to his duties as trustee" and had been cast in judgment.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

Indeed, Mr. Segal apparently approached Simpson, Thacher & Bartlett and sought an opinion as to whether or not the said additional fee should be paid.

Simpson, Thacher & Bartlett's time sheet dated November 28, 1972 reflects the Simpson, Thacher & Bartlett answer:

"Letter to Segal enclosing a draft of a letter to be sent to Freedman re advisability that Fund defer payment of Freedman's legal fee until decision regarding surcharge is reversed."

Of course, there was no reversal. But there was no indication then that Simpson, Thacher & Bartlett thought there should be any allocation of the Bloom and Epstein bill.

So, notwithstanding the Simpson, Thacher & Bartlett opinion (*supra*) to persuade his co-trustees, Mr. Freedman (or someone on his behalf) hired the firm of Willkie, Farr & Gallagher to opine on the propriety of making such payment out of the trust. Apparently some but not all the documents were furnished to Willkie, Farr & Gallagher to formulate their opinion on the subject.

For example, it does not appear that the July 6, 1970 order of this Court was furnished to them.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

Nor does it appear that they were aware that Bloom and Epstein had already been paid \$51,803.37.

Nor does it appear that they considered that Bloom and Epstein had been representing Messrs. Curran and Wall - a fact which was extremely significant - considering the July 6th order.

Nor does it appear that they were told what Simpson, Thacher & Bartlett; Surrey, Karasik, Morse & Seham; Weil, Gotshal & Manges; or Botein, Hays, Sklar & Herzberg had already been paid out of the Fund.

What is perhaps most astounding is that there is no indication that Willkie, Farr & Gallagher had been given a copy of the Simpson, Thacher & Bartlett opinion of the subject.

But Willkie, Farr & Gallagher charged the sum of \$7,059.84 to say that it was proper to pay \$34,035.74 to Bloom and Epstein out of the trust. So the trustees paid it. And they paid Willkie, Farr & Gallagher the \$7,059.84 too, apparently without seeking an opinion as to the propriety of that payment.

Why wasn't the Simpson, Thacher & Bartlett opinion not to pay Bloom and Epstein final? The answer is simple.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

Simpson, Thacher & Bartlett was representing an individual, Segal, and not representing the trust.*

Why didn't the trustees come into court to seek direction with respect to this payment? This "high handed" transaction should not be condoned.

Simpson, Thacher & Bartlett knew the story, it did not take \$7,059.84 of their time to opine that the payment be deferred "until decision regarding surcharge is reversed". They knew the facts. They would not later be able to say, "Oh, that fact was not given to me to formulate an opinion." But they either allowed Mr. Segal to sign the check - or rather checks - or he signed them despite the fact he had been told not to. That in my opinion constitutes bad faith.

Messrs. Simpson, Thacher & Bartlett and Cooper waived any claim they might have had against the trust when they stood silently by when Mr. Freedman said in his affidavit sworn to the 30th day of January, 1974:

* Just as it has been held that counsel generally may not act for both the corporation and the defendant-directors [*Lewis v. Shaffer Stores Co.*, 218 F. Supp. 238 (SDNY, 1963)], it should follow here that counsel may not be compensated out of the Fund for the work done for the defendant-trustees. (See also *International Brotherhood of Teamsters, Etc. v. Hoffa*, 242 F. Supp. 246 at p. 256 (USDC, D.C., 1965, Robinson, D.J.); *Tucker v. Shaw*, 269 F. Supp. 924 at pp. 927-928 (USDC, EDNY, 1966, Rosling, D.J.); Business Corporation Law, §725.)

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

"I have personally paid my own counsel fee to Simon H. Rifkind, Esq. and to Messrs. Bloom and Epstein for the services which they rendered for me and no counsel fees were paid by the NMU Officers' Pension Plan or the National Maritime Union for services rendered on my behalf. The fee paid by the NMU Officers' Pension Plan to the firm of Messrs. Bloom and Epstein were in payment for services rendered by them for the sole benefit of the Plan. * * * Messrs. Bloom and Epstein were the only counsel to oppose this claim and were successful in this regard."

Silence under those circumstances was assent and is fatal to their present claim.

They had all the facts at their disposal.

A word or two should also be said about the \$29,611.49 which was paid to Messrs. Botein, Hays, Sklar & Herzberg for the supplementary proceeding on the Perry judgment. On information and belief, this would appear to be a record fee for such a proceeding especially in view of the fact that Judge Botein's firm did not collect any part of the said judgment from Mr. Perry.

But whatever services were rendered in proceedings supplemental to judgment were for Mr. Freedman's benefit. He has been subrogated and should pay whatever fees were incurred personally.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

I have not yet been given copies of the Weil, Gotshal & Manges bill, nor do I have any solid information concerning what services they rendered. Therefore, I cannot say that the \$5,251.15 they charged was properly chargeable to the trust.

II

Plaintiffs have asked the defendants' counsel to furnish them with copies of certain documents (See my letter to the Court dated June 10, 1974 and the enclosures referred to therein, which I incorporate by reference). Those documents have been withheld.

Simpson, Thacher & Bartlett has advised that they will submit copies to the Court for the purpose of determining whether or not they are relevant.

Obviously they are relevant on the issue here present: "How much, if anything, is properly chargeable to the trust?"

In short:

1. I challenge the right of the three trustees to engage three sets of attorneys to represent the trust (as distinguished from the individual trustees) and to charge the trust with more than a fair fee for one attorney. If three separate sets of attorneys were engaged for that purpose, they should be required to divide among them one fair fee.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

2. I challenge the right of trustees whose negligence caused the loss to charge any part of their expense incurred in defending a surcharge.

3. I challenge the propriety of any charge by the individual trustees for their defense of the individual trustees on the issue of the personal liability for payments this Court held to have been unlawfully made (e.g., Brauch).

4. I challenge the failure of the trustees to pass along to Mr. Freedman, personally, the expense of their futile efforts to collect the Perry judgment. This was solely Mr. Freedman's chestnut being pulled from the fire.

5. I challenge the "good faith" of the trustees in seeking an opinion from Willkie, Farr & Gallagher on the subject of the payment of the second Bloom and Epstein bill when Mr. Segal had already obtained an opinion on that subject and had communicated the negative answer to Mr. Freedman (and I presume to Mr. Karchmer as well).

6. I challenge whether the trustees had "clean hands" in paying any portion of the second Bloom and Epstein bill out of the Fund.

7. I challenge the propriety of the payment of \$7,059.84 to Willkie, Farr & Gallagher out of the Fund for rendering the aforesaid opinion. Again such opinion was solely for the benefit of Abraham E. Freedman and any charges should have been passed on to him personally.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

8. I challenge the propriety of the payment of any portion of the legal fees rendered to the negligent trustees out of the Fund because of their conflict of interest. (They chose to place their personal interests ahead of their interests as trustees.) I further challenge those payments on the additional ground that in not questioning the statement contained in Mr. Freedman's affidavit sworn to January 30, 1974 to the effect that only his attorneys had rendered services to the trust, the other trustees waived any rights to reimbursement they may have had.

9. Finally I challenge Mr. Freedman's right to any reimbursement whatever because:

(a) he has been recklessly indifferent to his duties as trustee,

(b) he has, in my judgment, materially misled the Court on the subject of the attorneys' fees paid out of the Fund, and

(c) he has knowingly and wilfully disobeyed the order of July 6, 1970 (together with Messrs. Curran and Wall).

But be that as it may, I have tried, in good faith, to work out a settlement of the defendants' fee issues. The failure of the defendants to produce for my inspection the certain documents from their files has thwarted my efforts to date.

REPLY AFFIDAVIT OF ARTHUR E. MCINERNEY

I am willing to explore the area of settlement more fully, but there is yet one further hurdle which may be insuperable.

I have been advised by Messrs. Simpson, Thacher & Bartlett and Herman E. Cooper that whatever portion of their fee is allocated to the trust - no matter how generous - they fully intend to recommend an appeal to their clients from the amount charged against them personally.

In other words, they want to "eat their cake and have it too."

It is my position that if there is a settlement, such settlement should preclude an appeal.

(Sworn to by Arthur E. McInerney, June 13, 1974.)

EXHIBIT A, ANNEXED TO REPLY AFFIDAVIT OF
ARTHUR E. MCINERNEY.

"MY EXPERIENCES WITH MY ALLEGED ATTORNEY IN THIS
MATTER

I think it is important for this Court to have on the record my experiences with my alleged lawyers in this case. As I said before, after I received my pension a lawsuit was started. I received some papers which I didn't fully understand and called Mr. Abraham E. Freedman, the lawyer for the NMU. He told me not to worry because he would take care of everything for me and it would cost me nothing. Thereafter Mr. Freedman and his office allegedly undertook my defense as well as the defense of Mr. Curran and Mr. Wall while Charles Sovel, a member of Mr. Freedman's firm, undertook Mr. Freedman's defense. Whenever I asked what was going on, I was told to stay away and mind my own business. Of course I didn't know that my interest and those of the other defendants were different and in conflict when Mr. Freedman told me not to worry about anything.

I never heard from Mr. Freedman about the case until he called and said we had to meet. At this meeting he told me that I had to get a new lawyer because there was a conflict of interest on his part. He told me to go to Greenhill and Speyer and see Mr. Speyer because that firm was doing a lot of work for his law firm and Mr. Speyer would do what he (Mr. Freedman) told him to do. Mr. Freedman also gave me \$1,750 in cash to pay Mr. Speyer. When I had to pay Mr. Speyer an additional \$1,750, Mr. Charles Sovel of Mr. Freedman's office gave me the cash to give him and the third time Mr. Sovel again gave it to me and it was delivered to Mr. Speyer by an NMU secretary. I never paid Mr. Speyer with my own money. Mr. Speyer knew how I was referred to him and who was paying him. For all practical purposes I was never advised as to the status of my case or why I was being sued. The next thing I know is that a huge judgment had been entered against me and that I was to be examined by Herbert Zelenko, whose name appears on Mr. Freedman's stationery. Mr. Zelenko also told me not to worry and that he would have to ask me a few questions that all debtors are asked and maybe make a motion but that was only to protect himself. He told me to just answer some questions and again everything would be taken care of.

In the summer of 1972, Mr. Charles Sovel contacted me and told me that we had to get rid of Mr. Speyer because he would not be able to stand the pressure when the "heat" was put on. Mr. Sovel told me to contact Abraham Litke in Brooklyn and that he would be my new attorney. I asked Mr. Sovel who would pay his bills and he told me to tell Mr. Litke to call him. Both Mr. Sovel and Mr. Litke told me that Mr. Sovel told Mr. Litke to call Mr. Ed Silver at Proskauer, Rose, Goetz & Mendelsohn to settle a case in which Mr. Litke represented an architect against some part of the NMU. Mr. Sovel told me that Mr. Litke should ask for \$65,000.00 to settle the case and that would include an amount which was more than enough to cover Litke's fees for my case. Mr. Sovel also said he would tell Mr. Speyer to send my file to Mr. Litke and that he would take care of the rest of the fee owed to Mr. Speyer. I went to see Mr. Litke, told him

EXHIBIT A, ANNEXED TO REPLY AFFIDAVIT OF
ARTHUR E. MCINERNEY

what Mr. Sovel told me to, and he agreed to take my case. Mr. Litke told me he called Mr. Silver's office, demanded the \$65,000.00 and was turned down. Mr. Litke then called Mr. Sovel and told him what Mr. Silver's office had done. Mr. Sovel told Mr. Litke to call again and that this time it would be taken care of. In the meantime I called Mr. Silver, a man I know quite well, to tell him what had transpired and that I didn't agree with it. Mr. Silver agreed with me and advised me that he would have nothing to do with this type of arrangement. At this point the offices of Botein, Hays, Sklar & Herzberg had taken over from Mr. Zelenko, I had decided to replace Mr. Litke and get my own attorney. * * *

Mr. Abraham E. Freedman had three days in which to reply to that affidavit. Neither he nor Mr. Sovel denied any of the allegations made by Mr. Perry.

Abraham E. Freedman's attorneys did file a reply affidavit. Lawrence I. List, a member of the firm of Botein, Hays, Sklar & Herzberg, made that affidavit which was sworn to on the 2nd day of November, 1972, in which he stated at page 4: "Perry's experiences in this matter with those whom he now refers to as 'my alleged attorneys' make no difference."

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JULY 3, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HERMAN E. COOPER, being duly sworn, deposes and
says:

1. I am a member of the bar of the State of New York,
having been admitted to practice in 1932. From January 1, 1971 until
May 1, 1972, I was associated with the law firm of Surrey, Karasik,
Morse and Seham as Special Counsel. Prior thereto I was a senior
partner in the law firm of Cooper Ostrin De Varco & Ackerman.

2. In or about December, 1970 I was retained by Mr.
Leon Karchmer to represent him as a defendant-trustee in the action
entitled MORRISSEY et al. v. CURRAN et al. and Surrey, Karasik, Morse
and Seham was substituted for Simpson Thacher & Bartlett, who until
then had represented both Martin E. Segal and Mr. Karchmer.

3. My designation resulted from the view of Mr.
Karchmer that a possible diversity of interest might materialize as
between the individual trustees, particularly in light of the status of the
litigation at that point. In addition, Mr. Karchmer considered that my
familiarity with the subject matter and legal area of the litigation might

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JULY 3, 1974

serve to materially contribute in the defense of himself individually, and of the trustees collectively. Accordingly during the period of my association with Surrey, Karasik, Morse and Seham I represented Mr. Karchmer in the firm name. When this association terminated I was individually substituted for the firm as attorney and have been individually representing Mr. Karchmer since that time.

4. I make this affidavit in response to the request of the Court on June 28, 1974 to confirm the total legal fees and disbursements received from the NMU Officers' Pension Trust by me personally and by Surrey, Karasik, Morse and Seham in this matter. On March 11, 1974 I itemized by letter to the Court the payments received to a total of \$62,859.61 and also noted that as of then I estimated as due since June 30, 1973 a figure of \$8,500 exclusive of disbursements.

5. In reviewing my files and records as to time and effort expended it has not been possible to more than roughly approximate the proportion attributable to the Perry matter since I actively participated in the underlying as well as peripheral aspects of the litigation involving the trustees collectively, as well as Mr. Karchmer as an individual trustee.

AFFIDAVIT OF HERMAN E. COOPER SWORN TO JULY 3, 1974

6. *I believe that Simpson Thacher & Bartlett was more successful in evaluating a relatively fair allocation and consequently accept Mr. Reardon's opinion that thirty-nine percent (39%) of the total amount of fees should be allocated to Mr. Karchmer's defense of the Perry payment.*

7. *It goes without saying that neither my discussions with Mr. McInerney nor this affidavit should serve to prejudice the position of Mr. Karchmer that the Fund should not be reimbursed by him for legal fees and disbursements expended on his behalf. Any disposition of this limited question of allocation agreeable to all counsel and as may meet the approval of the Court should, of course, not be conditioned to foreclose the right of appeal by defendant Leon Karchmer.*

(Sworn to by Herman E. Cooper, July 3, 1974.)

AFFIDAVIT OF ROY L. REARDON SWORN TO JULY, 1974.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

State of New York,

County of New York, ss:

ROY L. REARDON, being duly sworn, deposes and says:

1. I am a member of the firm of Simpson Thacher & Bartlett, attorneys for defendant Martin E. Segal in the above-referenced matter and am fully familiar with all the matters hereinafter set forth. I make this affidavit at the request of the Court at a pre-trial conference held on June 28, 1974 and without prejudice to Mr. Segal's position that he should not have to reimburse the Fund for his defense of an unsuccessful attempt at surcharge.

2. As I have previously informed the Court, my firm has been paid a total of \$96,273.24 for its legal fees and reimbursement of its expenses in this matter. From the commencement of the action in February, 1969, through late December 1970, we represented both Mr. Segal and Mr. Karchmer and for that period of time our legal fees and disbursements were \$28,922.26. Therefore, in calculating our fees and disbursements in representing Mr. Segal, one-half of \$28,922.26 (or \$14,461.13) should be deducted as not expended on behalf of Mr. Segal. This leaves a balance of \$81,812.11.

AFFIDAVIT OF ROY L. REARDON SWORN TO JULY, 1974

3. As is set forth at some length in my Supplemental Affidavit of June 4, 1974, after analyzing our time records and other relevant materials, it is my opinion that 39 percent of this total amount should be allocated to Mr. Segal's defense of the payment to Mr. Perry. On this basis, the total amount of our fees and disbursements relating to the Perry matter is \$31,906.72.

(Sworn to by Roy L. Reardon, July, 1974.)

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

State of New York,
County of New York, ss:

Arthur E. McInerney, being duly sworn, deposes and
says:

I make this affidavit by way of a final report on
the attempts made to settle the issue of the defendants'
attorneys' fees chargeable to the NMU Officers' Fund -
an NMU fund. This affidavit is made without prejudice.

After we have all gone that last mile, it now appears
that a settlement different from that suggested in open
court on June 28, 1974 cannot be recommended by me. That
recommendation was unacceptable to the defendants' counsel,
who have insisted on nothing less than complete capitulation
to forego their right to appeal.

But I had grave reservations on whether such recommend-
ation would be approved by the Court in any event. The
most salutary part of such recommendation, as I saw it, was
that it was designed to terminate this litigation.

The reservations harbored by me revolved around such
problems as the defendants' attorneys' conflicts of interest
and the use of union funds to compensate defendants'
attorneys under the circumstances here.

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

As will be more fully developed, I was even more concerned with the inequities of Messrs. Curran and Wall getting a "free ride" as far as their legal expenses were concerned, while Mr. Freedman paid only a small fraction of his legal fees. Surely they were all at least as culpable as Messrs. Segal and Karchmer.

Should the Court grant the motions to reargue, or any of them, there must, I submit, be a hearing on these issues under the dictates of *City of Detroit v. Grinnel Corporation* (2d Circuit, March 13, 1974).

CURRAN:

On July 6, 1970 this Court signed an order on the mandate of the Court of Appeals. That order provided in applicable part:

"The defendants are enjoined from employing counsel paid or to be paid with union funds."

Thereafter the firm of Bloom and Epstein appeared for the defendant Curran.

At a National Council meeting held on November 13, 1970 it was suggested that Mr. Curran's (and Mr. Wall's) counsel be paid out of some NMU fund:

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

"MR. BOCKER: I wonder if it wouldn't be fitting and proper in light of the fact that there has been a personal suit filed against President Curran, Shannon Wall and the Trustees, whether or not - and I am only asking for information - if it wouldn't be fitting and proper to set up a defense fund from the membership to defend the Secretary-Treasurer and the President in this?" (SM p. 27)

I have not been advised what action was taken on that suggestion.

On the information adduced it is fair to assume that Mr. Curran did not pay any part of his own legal fees in this action personally, notwithstanding the July 6, 1970 order.

This Court has directed that the fees paid from the Officers' Fund for services rendered in defending Karchmer and Segal be refunded because of their negligence. By the same token, any fees paid to Bloom and Epstein and to Bromsen, Gammernan, Altier & Wayne for services rendered in defending Mr. Curran should be refunded. Mr. Curran was equally negligent with the trustees. Not only did he stand aloof and allow the trustees to make the payment to

FINAL AFFIDAVIT OF ARTHUR E. McINERNEY
SWORN TO JULY 10, 1974

Perry but he had actually participated in the plan and design to get the money to Perry by authorizing and signing the check.

This Court found in its October 26, 1972 decision all the facts relating to Mr. Curran's culpability here including the fact that he "dominated the people who had anything to do with the payment from the Officers' Pension Plan to Perry".

During the pre-trial and trial I searched in vain for the one piece of irrefutable evidence that would have linked Mr. Curran to the Perry payment. But the circumstantial pattern of his misconduct was clear enough.

Indeed, while the plaintiffs are not seeking to reopen the trial on the basis of the evidence obtained after the judgment of November 15, 1972, Mr. Perry on July 25, 1973 did testify at a deposition in another action as follows:

"Q Did you have a conversation with Curran on the morning you left the Union?

A I had a conversation at noon. I think I met Mr. Curran coming out of a restaurant. He was coming out with Mr. Shapiro. I think Mr. Strassman was there. Maybe Mr. Barisic, from a restaurant on 13th Street, Mario's Restaurant.

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

Q What did he say to you and what did you say to him at that time, if anything?

A I just said that I went down to get my money and they are giving me a rough time. You told me that I was supposed to get my money. At that point Mr. Shapiro, and I think, Mr. Strassman, accompanied me, to make sure that I wouldn't have any more problems to get my money.

Q Did Mr. Curran say anything at that time?

A He said just, 'Come down, you will get your money, what is due you.' That is it.

That was on the street.

Q Just so that I understand you correctly, the money that you are referring to there is out of the Officer's Pension Fund; is that correct? You were going from that restaurant up to -

A You are right.

Q Mr. Segal's first and then Mr. Klotchner's [(sic.) Karchmer's] office?

A That is right, either one. I don't know which one." (SM pp. 15-16)

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

Mr. Curran should not escape unscathed.

The order of July 6th will not have been heeded if he does.

WALL:

Mr. Wall is in much the same position as Mr. Curran regarding the payment of his counsel fees.

Although Mr. Wall filed an affidavit in response to the plaintiffs' original motion to punish the various defendants for their contemptuous disobedience of the order of July 6, 1970, he did not state that he personally paid any part of his own legal fees for his defense in this action.

PERRY:

The plaintiffs' motion to punish the defendants for contempt did not include the defendant Perry.

Nonetheless, there is an implication in Mr. Perry's affidavit that the three \$1,750.00 cash payments to Mr. Perry for his defense, totaling \$5,250.00, by Messrs. Freedman and Sovel were made out of union funds. This should be explored to find the source of such payments.

It is suggested that Curran, Wall and Freedman are responsible, if such payments were made from union funds, and are therefore in contempt of this Court's order in that regard (See *infra*, pp. 6-9).

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

KARCHMER AND SEGAL:

Messrs. Karchmer and Segal were found negligent. Their situation has been reviewed at great length in earlier papers submitted.

There is nothing further to be added except:

1. Simpson, Thacher & Bartlett, in permitting Mr. Segal to make payments to them must have operated on the false premise that the Officers' Fund was not a union fund. I need not remind the Court that it has been held otherwise, and that that holding has been affirmed on appeal.

Of course, had Simpson, Thacher & Bartlett considered the Officers' Fund a union fund, it may be assumed that they would not have accepted payment from that source.

2. The trustees Karchmer and Segal must have had advice in December of 1972 that any further payments out of the fund to Bloom and Epstein would be improper. No matter what their personal inclinations were, they should have either refused to pay or come into Court to ask for directions with respect to the Bloom and Epstein fee. They did neither.

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
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FREEDMAN:

Mr. Freedman is in a class by himself.

He is a lawyer and as such he should have known better than to approve the Bloom and Epstein charges as trustee.

After having done so, he had a duty to the Court to make a full disclosure of the payments made out of the Fund.

But Mr. Freedman made no such disclosure. The huge funds secretly paid in defense of the various defendants had been a carefully guarded secret. The information regarding those fees was extracted by plaintiffs' counsel - painful as that extraction was to Mr. Freedman.

Still, many questions remain unanswered. Mr. Freedman might well explain whose ingenious idea it was to pay Perry's counsel in the way Mr. Perry claims it was to have been paid. This Court will recall that Mr. Perry filed an affidavit in which he claimed that an unrelated claim against the NMU was to be settled for \$65,000 and that that was more than the claim was worth. Mr. Perry said that the payment would include a sufficient excess to defray his legal expenses (See Exhibit A to my affidavit sworn to the 13th day of June, 1974).

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Mr. Perry expanded on that affidavit at his deposition (*supra*, SM pp. 27-33):

"* * *I received a call from Abe Freedman. He called my home. He said that Jim Morrissey's lawyer, McInerney, that, so and so, made a motion and the judge, I understand, made a motion, said that Abe can no longer represent us and that he had to, he and Curran had to go seek lawyers.

So, I said, 'What do you want me to do?'

He said, 'You give me a couple of days and we will get you a lawyer.'

About two, three days later he called me and asked me to get in touch with Mr. Speyer, From Greenhill & Speyer. I went up to see Mr. Speyer and the Union, I guess, Chuck, or whoever it was, I don't know who transferred, I assume, all my files from their office. I don't know who did, but after a while Mr. Speyer had the whole correspondence, the whole legal, all the legal papers and he was handling it and a young fellow by the name of Michael something; he was down in Israel, a young attorney. He is not there any more, I assume - go ahead.

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
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Q When you went to Greenhill & Speyer, did the subject of the fee come up there?

A Yes.

Mr. Speyer said, 'As you know, you were received by Abe. I want you to know that Abe is a very personal close friend of my partner, Mr. Greenhill, and we do a lot of work for the firm, from time to time; of counsel work. There is going to be about a \$2,500 fee or something like that.'

I said, 'I thought that Abe straightened it out because I had a discussion with Abe as far as the money is concerned.'

He said, 'No. You better have a talk with him because it is better that you talk to him then we talk to him because we are very close.'

I called Abe and Abe said that he is coming into New York to attend the National Office meeting and I met him at 33rd Street and 8th Avenue in the lobby of Madison Square Garden, as you walk down to Penn Station.

Mr. Sovel was outside in his Cadillac waiting for Abe to pick us up to 7th Avenue and it was in the wintertime because I had my overcoat on. I said, 'Abe, I met with the lawyer. He

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

sent me up there and he wants money. What the hell is going on?'

He said, 'All right. We will straighten it out. We will take care of it.'

On a couple of occasions, Mr. Sovel gave me cash. I think it was \$1,700 or \$1,750, which I took to Mr. Speyer. At one time Mr. Bright sent up a girl; she works in the Union. She delivered \$1,700 cash to Mr. Speyer. I personally, William Perry, never paid Mr. Speyer for representing me.

Q All the payments were in cash; is that correct?

A Correct, sir.

Q Do you know how many payments there were?

A I think three. I could be wrong, I think three. I am not sure, but I could look home. I believe that I have a receipt for all the payments that were given me by Mr. Speyer. He gave me a receipt for the money.

Q Will you furnish those?

A I am not sure that I have them, but I am going to look at them and see if I have them. If I have them I will give them to my attorney.

MR. MCINERNEY: You will furnish us copies of those?

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

MR. OLICK: I will let you know whether we will produce them.

Q Did there come a time when you received a phone call from someone connected with the Union or Union lawyers who told you that the time had come to discharge Greenhill & Speyer?

A Yes. Chuck called me and he said, you know, we have to discharge Mr. -- no. No. It wasn't. Excuse me, I am sorry. I had a discussion with Mr. Speyer and Mr. Speyer told me at a few occasions that I want you to know, we represent (sic.) you and he said at one point, 'When a thing gets hot, we are going to withdraw from the case because we will not do anything that will hurt or damage the reputation of Abe Freedman.'

I said, 'What the hell kind of lawyer are you? You are supposed to represent me, not Abe.'

So, I guess it got hot because Judge Bonsal was put to some questions that I never knew anything about. No one ever asked me and I met Chuck Sovel on 14th Street and 8th Avenue in front of Pappa's Restaurant."

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
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The outrageous method devised to defray Mr. Perry's further legal expenses thereafter shows the utter depravity which existed. Mr. Perry continues as follows:

"Q What was the conversation with Mr. Sovel on that occasion?

A He said that Speyer will not represent you any longer and that you should get in touch with Mr. Litke.

So I said, you know, I don't even know this guy and he represented at that time, Mr. Ledner, who had a lawsuit against the union.

He said, 'You tell Mr. Litke that when he settles the case his fees will be included to cover my expenses.'

Q That was that gentleman's name?

A Litke.

Q No. That's the lawyer. I am talking about the man who he represented.

A Represents what?

Q Mr. Litke, you said.

A Represented Mr. Ledner.

Q Was Mr. Ledner an architect?

A Yes, correct.

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
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Q Was Mr. Litke told to ask for \$65,000 in settlement?

A That is right and I went back to Mr. Litke and told him that Mr. Sovel told me that you should ask for 65 which will cover it and I said, 'I have never bothered the guy for business.'

He and Mr. Litke then approached the Pension Plan attorneys where the lawsuit was pending and the response was, at that time, from Mr. Silver, who represented the company, and he said, 'If this is the type of action that is going on, I want you to know, Bill, I will notify Curran and Shapiro that me and my law firm will disassociate itself and I won't have anything to do with this case. I am not getting involved in any kind of underhanded deal. I don't want to be a party to anything like that.'

I said, 'Ed, listen. I am not involved in anything. I am just relaying the message.'

He then called Mr. Freedman and Mr. Freedman was, according to Mr. Silver, was very annoyed. Chuck then called Silver and he said, 'Listen--'

No, he called Mr. Litke."

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

Then there is Perry's claim that Mr. Zelenko (of Mr. Freedman's office) had told him (Perry) during the supplementary proceedings that he (Zelenko) would just ask some questions for his (Zelenko's) protection. Mr. Freedman never responded to that claim by Mr. Perry.

Mr. Freedman has claimed that he paid Judge Rifkind personally. But it is respectfully suggested that his credibility has been so seriously impaired, that the evidence to support that claim (the legal bills and cancelled checks) should be produced - wherein consider the minutes of the NMU National Office meeting which reflect that there was such a payment labeled for the Wimbush suit.

No affidavit (or information in any form) regarding the payment by NMU to Judge Rifkind or to his firm, Paul, Weiss, Rifkind, Wharton & Garrison, has been received to the date of this affidavit, notwithstanding Your Honor's directions on this subject on June 28, 1974, to one of Mr. Freedman's partners, Mr. Gruber.

CONCLUSION:

One fact that should not be lost sight of is that despite the order of July 6, 1970 substantial moneys for the defense of each of the Section 501 fiduciaries was paid from union funds for: (1) the purpose of sustaining

FINAL AFFIDAVIT OF ARTHUR E. MCINERNEY
SWORN TO JULY 10, 1974

a rather substantial illegal payment to Curran's man, Perry - a man who knew a lot; and (2) the purpose of defending the §501 fiduciaries personally. All other services appear to have been purely coincidental and constituted no more than an insignificant fraction of the total services rendered.

WHEREFORE, the plaintiffs respectfully pray that:

1. their motion for reargument be granted;
2. the defendants' motions for reargument be denied, or, in the alternative, the matters involved be set for hearing on the issue of allocation of their attorneys' fees; and
3. that a date be fixed for a hearing on the plaintiffs' application for attorneys' fees and disbursements.

(Sworn to by Arthur E. McInerney, July 10, 1974.)

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED AUGUST 26, 1974.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

DUER & TAYLOR, 74 Trinity Place, New York, N. Y.
10006, Attorneys for Plaintiffs, ARTHUR E. MCINERNEY,
JOHN S. CHAPMAN, JR., Of Counsel.

ABRAHAM E. FREEDMAN, 346 West 17th Street, New York,
N. Y. 10011, Attorneys for Defendants Curran and Wall by
STANLEY B. GRUBER.

SIMPSON THACHER & BARTLETT, One Battery Park Plaza,
New York, N. Y. 10004, Attorneys for Defendant Segal, ROY
L. REARDON, MELVYN L. CANTOR of Counsel.

CHARLES SOVEL, 346 West 17th Street, New York, N. Y.
10011, Attorney for Defendant Freedman.

HERMAN E. COOPER, 500 Fifth Avenue, New York, N. Y.
10036 Attorney for Defendant Karchmer.

BONSALE, D. J.

Defendants Leon Karchmer and Martin E. Segal move for
reargument of this Court's decision filed May 1, 1974
insofar as it requires them to reimburse the NMU Officers
Pension Plan ("the Plan") for the amounts of their
respective attorneys' fees and disbursements paid by the
Plan. Plaintiffs move for reargument of the Court's
decision filed May 1, 1974 insofar as it denied plaintiffs'
motion to hold defendants Freedman, Curran, and Wall in

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
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contempt of this Court's order of July 6, 1970* and insofar as it denied plaintiffs' motion to direct judgment against defendant Freedman in favor of the Plan in a "sum equal to the total payments made out of the [Plan] in his defense as a trustee of the [Plan]."

In prior proceedings it has been determined that defendant Freedman (one of three trustees of the Plan) was subject to surcharge for the lump sum pension paid to William Perry, but that trustees Segal and Karchmer, who acted in reliance on Freedman's legal opinion, while negligent in doing so on the facts stated in this Court's opinion filed October 26, 1972, were not in willful violation of their duty as trustees nor were they acting in bad faith. Accordingly, they were not surcharged for the payment to Perry. *Morrissey v. Curran*, 351 F. Supp. 775 (S. D. N. Y. 1972), *aff'd*, 483 F. 2d 480 (2d Cir. 1973), *cert. denied*, 414 U. S. 1128 (1974).

By memorandum decision filed May 1, 1974 this Court held that in negligently processing the lump sum payment to Perry, trustees Segal and Karchmer were at fault. Accordingly, the Court directed that Messrs. Segal and Karchmer should reimburse the Plan for the amounts of their respective attorneys' fees and disbursements paid by the

* In relevant part the Court's order of July 6, 1970 provides:

"The defendants are enjoined from employing counsel paid or to be paid with union funds."

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
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Plan on their behalf in their defense with respect to the Perry payment. The Court adheres to that holding and; accordingly, the motions of Messrs. Segal and Karchmer for reargument are denied, and they are directed to reimburse the Plan in the amounts hereinafter set forth.

It appears from the affidavit of Roy L. Reardon, sworn to on July 8, 1974, that the firm of Simpson Thacher & Bartlett represented both Mr. Segal and Mr. Karchmer from the commencement of the action in February, 1969 through late December, 1970. For that period of time, Simpson Thacher & Bartlett's legal fees and disbursements were in the amount of \$28,922.26, which amount was paid by the Plan on behalf of Messrs. Segal and Karchmer (or \$14,461.13 with respect to each of them). It also appears that from late December, 1970 to the present, the firm of Simpson Thacher & Bartlett has represented only Mr. Segal in this litigation and that its legal fees and disbursements in connection with its representation of Mr. Segal from late December, 1970 to June 30, 1973 were in the amount of \$67,350.98. Thus, the total of legal fees and disbursements paid by the Plan to Simpson Thacher & Bartlett attributable to the defense of Mr. Segal is: \$81,812.11 (\$67,350.98 plus \$14,461.13).

In his affidavit Mr. Reardon states:

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED AUGUST 26, 1974

"[A]fter analyzing [Simpson Thacher & Bartlett's] time records and other relevant materials, it is my opinion that 39 percent of this total amount [\$81,812.11] should be allocated to Mr. Segal's defense of the payment to Mr. Perry [the only payment with respect to which this court found Mr. Segal to have been negligent]. On this basis, the total amount of [Simpson Thacher & Bartlett's] fees and disbursements relating to the Perry matter is \$31,906.72."

On the basis of Mr. Reardon's affidavit, Segal is directed to reimburse the Plan in the amount of \$31,906.72.

It appears from the affidavit of Herman E. Cooper, sworn to on July 3, 1974, that Mr. Cooper has represented Mr. Karchmer from late December, 1970 to the present. From January 1, 1971 to May 1, 1972 (during Mr. Cooper's association with the firm of Surrey, Karasik, Morse and Seham) he represented Karchmer in the firm name. The legal fees and disbursements received by him personally and by Surrey, Karasik, Morse and Seham in connection with the representation of Karchmer to June 30, 1973 total \$62,859.61. Thus, the total legal fees and disbursements paid by the Plan attributable to the defense of Karchmer is: \$77,320.74 (\$62,859.61 plus \$14,461.13).

In his affidavit Mr. Cooper states:

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED AUGUST 26, 1974

"In reviewing my files and records as to time and effort expended it has not been possible to more than roughly approximate the proportion attributable to the Perry matter since I actively participated in the underlying as well as peripheral aspects of the litigation involving the trustees collectively, as well as Mr. Karchmer as an individual trustee."

Since Segal and Karchmer were in substantially the same position in the litigation, and Mr. Cooper having accepted Mr. Reardon's formula, 39 percent of the \$77,320.74 received for services rendered to Karchmer (\$30,155.08) is allocated to Karchmer's defense with respect to the Perry payment, which amount Karchmer is directed to reimburse to the Plan.

Mr. Freedman states in his affidavit, sworn to on January 30, 1974:

"I have personally paid my own counsel fee to Simon H. Rifkind, Esq. and to Messrs. Bloom and Epstein for the services which they rendered for me and no counsel fees were paid by the NMU Officers' Pension Plan or the National Maritime Union for services rendered on my behalf. The fee paid by the NMU Officers'

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED AUGUST 26, 1974

Pension Plan to the firm of Messrs. Bloom and Epstein were [sic] in payment for services rendered by them for the sole benefit of the Plan . . . No portion of any counsel fee for services rendered to me personally have been paid for by the NMU Officers' Pension Plan."

In an affidavit sworn to on July 15, 1974, Mel Barisic (Secretary-Treasurer of the National Maritime Union of America, AFL-CIO) states:

"The legal fees referred to in the National Office Minutes of January 4, 1974 were not paid in connection with any matter involved in [this litigation], nor did they include payment of any fees incurred by any of the Trustees of the NMU Officers Pension Plan."

Based on the foregoing it appears that Mr. Freedman has paid his own legal expenses arising out of this litigation. Therefore, with respect to Mr. Freedman, there is no basis for any order directing him to reimburse the Plan for legal fees and disbursements attributable to his

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MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED AUGUST 26, 1974

defense. In addition, a review of the voluminous documents in this case does not disclose that any of the defendants are in contempt of this Court's order of July 6, 1970. Accordingly, plaintiffs' motion for reargument is denied.

Settle order on notice.

DATED: August 26, 1974
New York, N. Y.

Dudley B. Bonsal
U. S. D. J.

ORDER AND JUDGMENT APPEALED FROM.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

Upon the pleadings, proceedings and proof heretofore had herein, and upon the decisions in writing of this Court dated and filed May 1, 1974 and August 26, 1974, respectively, it is hereby

ORDERED, that plaintiffs' motion to hold defendants Joseph Curran, Shannon Wall, Martin Segal, Abraham E. Freedman and Leon Karchmer in contempt of Court is denied in all respects; and it is further

ORDERED, that plaintiffs' motion for the allowance of additional attorneys' fees of \$72,000 is denied in all respects; and it is further

ORDERED, that plaintiffs' motion for the entry of judgment against the National Surety Corporation in the amount of \$291,833.30 is denied in all respects; and it is further

ORDERED, that plaintiffs' motion for reargument of this Court's decision of May 1, 1974 is denied in all respects; and it is further

ORDERED, that the motions of defendants Martin Segal and Leon Karchmer for reargument of this Court's decision of May 1, 1974 are each denied except as otherwise provided below in this Court's decision of August 26, 1974; and it is further

ORDER AND JUDGMENT APPEALED FROM

ORDERED, that the Clerk of the Court enter judgment in favor of the N. M. U. Officers' Pension Fund against defendant Martin Segal in the amount of \$31,906.72, and it is further

ORDERED, that the Clerk of the Court enter judgment in favor of the N. M. U. Officers' Pension Fund against Leon Karchmer in the amount of \$30,155.08; and it is further

ORDERED, that as to any statements rendered to defendant Martin Segal for attorneys' fees and disbursements incurred and to be incurred by him in this action subsequent to June 30, 1973, defendant Segal shall pay 39% of any such amount and the N. M. U. Officers' Pension Fund shall pay 61% of any such amount; and it is further

ORDERED, that as to any statements rendered to defendant Leon Karchmer for attorneys' fees and disbursements incurred and to be incurred by him in this action subsequent to June 30, 1973, defendant Karchmer shall pay 39% of any such amount and the N. M. U. Officers' Pension Fund shall pay 61% of any such amount; and it is further

ORDERED, that a hearing be held on September 27th 1974 at 10AM in Room 706 on the application by plaintiffs'

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ORDER AND JUDGMENT APPEALED FROM

attorneys for fees and disbursements in connection with
services rendered in the proceedings herein and on appeals
subsequent to November 15, 1972.

DATED: New York, New York
September 11th, 1974

DUDLEY B. BONSAI
U. S. D. J.

JUDGMENT ENTERED: 9/17/74
Raymond Burghardt
Clerk

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NOTICE OF APPEAL BY DEFENDANT MARTIN E. SEGAL.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

SIRS:

PLEASE TAKE NOTICE that defendant Martin E. Segal, sued herein as Martin Segal, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the final order and judgment entered in this action on September 13, 1974, as directs the defendant Segal to reimburse the NMU Officers Pension Plan in the sum of \$31,906.72 and to pay 39% of all attorneys' fees and disbursements incurred and to be incurred by him in this action subsequent to June 30, 1973.

DATED: New York, New York
October 21, 1974

Yours, etc.,

SIMPSON THACHER & BARTLETT

By NM Cantor
A Member of the Firm
Attorneys for Defendant
Martin E. Segal
Office and P. O. Address
One Battery Park Plaza
New York, New York 10004

TO:

HERMAN COOPER, ESQ.
MESSRS. DUER & TAYLOR
MESSRS. BROMSSEN, GAMMERMAN, ALTIER & WAYNE
ABRAHAM E. FREEDMAN, ESQ.

PLAINTIFFS' NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

NOTICE IS HEREBY GIVEN that plaintiffs herein appeal to the United States Court of Appeals for the Second Circuit from so much of the judgment filed September 13, 1974 (74,743) which denies plaintiffs' motion to hold defendants Joseph Curran, Shannon Wall, Martin Segal, Leon Karchmer and Abraham E. Freedman in contempt of Court; and also from so much of the said judgment which denies plaintiffs' motion for the allowance of additional Attorneys' fee of \$72,000.00 for their services in the recovery of a judgment against the defendant Abraham E. Freedman in the sum of \$272,740.00 in favor of the NMU Officers' Pension Fund; and also from so much of the said judgment which fails to direct the trustees Abraham E. Freedman, Leon Karchmer and Martin Segal to return to the NMU Officers' Pension Fund the entire amounts paid out of the said fund after the order on July 6, 1970 to their respective counsel and to counsel acting on their behalf; and also from so much of the said judgment which fails to surcharge the defendants Joseph Curran and Shannon Wall for the sum paid their Attorneys, Bloom & Epstein out of the said order on July 6, 1970; and also from so much of the said judgment which provides that the defendants Martin Segal and Leon Karchmer may be

PLAINTIFFS' NOTICE OF APPEAL

reimbursed by the NMU Officers' Pension Fund for 61% of all Attorneys' fees and disbursements incurred and to be incurred by them in this action since June 3, 1972; and also from so much of the said judgment which fails to direct a hearing on the aforesaid issues.

DATED: New York, New York
October 11, 1974

DUER & TAYLOR

By: s/Arthur E. McInerney,
A Member of the Firm
Attorneys for Plaintiffs
Office & P. O. Address
74 Trinity Place
New York, New York 10006

TO: Abraham E. Freedman, Esq.,
346 West 17th Street, New York, N. Y.
Attorney for Defendants Joseph Curran
and Shannon Wall

Simpson, Thacher & Bartlett, Esqs.,
1 Battery Park Plaza, New York, N. Y.
Attorneys for Defendant Martin Segal

Charles Sovel, Esq.,
346 West 17th Street, New York, N. Y.
Attorney for Defendant Abraham E. Freedman

Herman E. Cooper, Esq.,
500 Fifth Avenue, New York, N. Y.
Attorney for Defendant Leon Karchmer

Bromsen, Gammerman, Altier & Wayne, Esqs.,
450 Seventh Avenue, New York, N. Y.
Attorneys for Defendants Joseph Curran
and Shannon Wall

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NOTICE OF APPEAL BY DEFENDANT LEON KARCHMER.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

SIR:

NOTICE IS HEREBY GIVEN that Leon Karchmer, a defendant in the above-captioned action, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the final judgment entered in this action on September 13, 1974, as directs the defendant Karchmer to reimburse the NMU Officers Pension Plan in the sum of \$30,155.00.

DATED: New York, New York
October 8, 1974

Yours, etc.

HERMAN E. COOPER
Attorney for Defendant
Leon Karchmer
500 Fifth Avenue,
New York, N. Y., 10036

To:

Duer & Taylor
Simpson Thacher & Bartlett
Bromsen, Gammerman, Altier & Wayne
Charles Sovel, Esq.

PLAINTIFFS' AMENDED NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

NOTICE IS HEREBY GIVEN that plaintiffs herein appeal to the United States Court of Appeals for the Second Circuit from so much of the judgment filed September 13, 1974 (74,743) which denies plaintiffs' motion to hold defendants Joseph Curran, Shannon Wall, Martin Segal, Leon Karchmer and Abraham E. Freedman in contempt of Court; and also from so much of the said judgment which denies plaintiffs' motion for the allowance of additional Attorneys' fee of \$72,000.00 for their services in the recovery of a judgment against the defendant Abraham E. Freedman in the sum of \$272,740.00 in favor of the NMU Officers' Pension Fund; and also from so much of the said judgment which fails to direct the trustees Abraham E. Freedman, Leon Karchmer and Martin Segal to return to the NMU Officers' Pension Fund the entire amounts paid out of the said fund after the order on July 6, 1970 to their respective counsel and to counsel acting on their behalf; and also from so much of the said judgment which fails to surcharge the defendants Joseph Curran and Shannon Wall for the sum paid their Attorneys, Bloom & Epstein out of the said fund after the said order of July 6, 1970; and also from so much of the said judgment which provides that the defendants Martin Segal and Leon Karchmer may be reimbursed by the NMU Officers' Pension Fund for 61% of all Attorneys' fees and disbursements

PLAINTIFFS' AMENDED NOTICE OF APPEAL

incurred and to be incurred by them in this action since June 30, 1973; and also from so much of the said judgment which fails to direct a hearing on the aforesaid issues.

DATED: New York, New York
October 23, 1974

DUER & TAYLOR

By: s/Arthur E. McInerney,
A Member of the Firm
Attorneys for Plaintiffs
Office & P. O. Address
74 Trinity Place
New York, New York 10006
(212) 944-7482

TO: Simpson, Thacher & Bartlett, Esqs.
1 Battery Park Plaza, New York, N. Y.
Attorneys for Defendant Martin Segal

Charles Sovel, Esq.,
346 West 17th Street, New York, N. Y.
Attorney for Defendant Abraham E. Freedman

Bromsen, Gammerman, Altier & Wayne, Esqs.,
450 Seventh Avenue, New York, N. Y.
Attorneys for Defendants Joseph Curran
and Shannon Wall

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LETTER DATED MAY 30, 1974 WITH REFERENCE TO
UPDATED EXHIBIT 9.
HERMAN E. COOPER
ATTORNEY AT LAW

500 FIFTH AVENUE
NEW YORK, NEW YORK 10036

TELEPHONE
212 486 1540

May 30, 1974

Duer & Taylor, Esqs.
74 Trinity Place,
New York, N. Y., 10006

Attention: Arthur E. McInerney, Esq.

Re: Morrissey, et al v. Curran, et al
69 Civ. 442

Dear Arthur:

I am herewith enclosing exhibit #9 updated
to May 29, 1974 and trust that it will serve your purposes.

Please acknowledge.

Very truly yours,

HERMAN E. COOPER

HEC:mj

Enc.

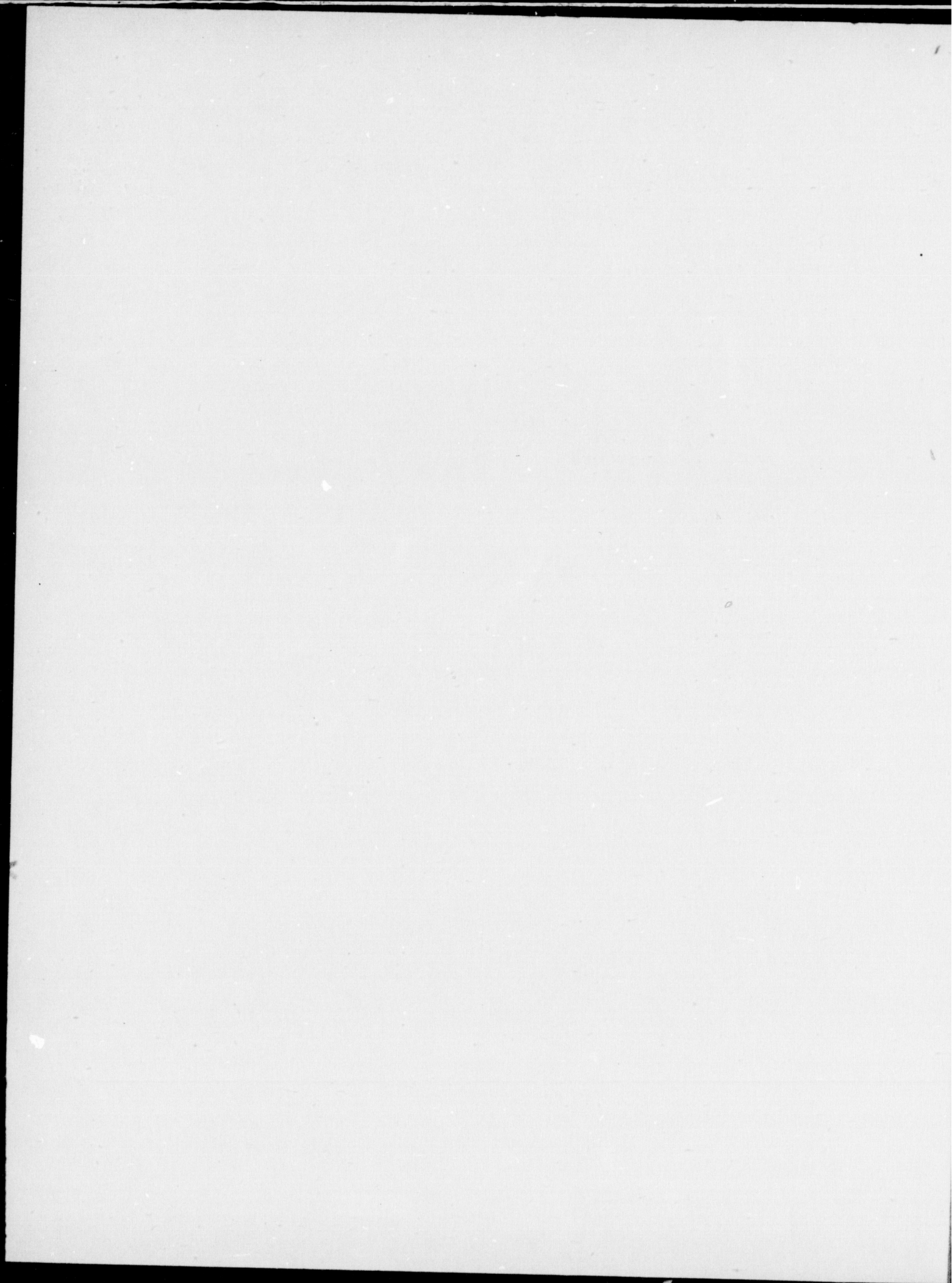
cc: Melvyn Cantor, Esq.

LETTER DATED MAY 30, 1974 WITH REFERENCE TO
UPDATED EXHIBIT 9

Legal Fees and Disbursements
W. M. M. Officers Pension Plan
June 23, 1973 To May 29, 1974

(5)	(6)	(7)	(8)	(9)	(10)	(11)	LINE NO.
			Legal Fees Paid	Legal Fees Paid	Fees for Collection of Money Judgment	Disbursements Fees	
Aug 23, 1973	J. E. Croft		1446.61				1
Aug 2, 1973	Simpson, Hickey, Cullitt			1561.57			2
Oct 7, 1973	Botwin, Kays, Kianata				3400.86		3
Oct 18, 1973	"				4509.51		4
Nov 14, 1973	"				1982.51		5
Dec 17, 1973	"				1184.31		6
Jan 14, 1974	"				1581.01		7
Feb 16, 1974	"				1873.51		8
Mar 15, 1974	"				1804.71		9
Nov 19, 1973	W. M. M. Officers Pension Plan						10
Dec 2, 1973	Bloom & Gaston						11
Blackby, 1970	Willie Fair, Kaling						12
						5451.15	13
						(Fees for)	14
						3400.86	15
						7059.84	16

CORRESPONDENCE BETWEEN COUNSEL AND THE COURT.



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LETTER DATED MAY 31, 1974.

May 31, 1974

Herman E. Cooper, Esq.
500 Fifth Avenue
New York, New York 10036

Re: Morrissey, et al v. Curran, et al
69 Civ. 442

Dear Herman:

I received your letter of May 30, 1974 together with the enclosure.

Would you kindly furnish me with copies of all the legal bills and attachments as per request #2 in my letter of May 21, 1974. Your letter of May 24, 1974 enclosed photocopies of only those statements rendered to your client, Leon Karchmer, and paid by the NMU Officers Pension Plan in the above matter.

In addition, kindly send along a copy of the Weil, Gotshal & Manges opinion. I am anxious to see how they attempted to justify the payment of any fee out of the trust to the attorneys for a trustee (Freedman) who already had been held to have been "recklessly indifferent to his duties as trustee" by two courts.

That opinion may well prove an important factor in my effort to "tilt the lance for justice" [Rosenfeld v. Black, 56 F.R.D. 604, at p. 605 (S.D.N.Y., 1972)] with respect to this most stupendous burden which Judge Bonsal has placed upon me.

Very truly yours,

AEM/cw

cc: Melvyn L. Cantor, Esq.

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LETTER DATED JUNE 4, 1974.

HERMAN E. COOPER

ATTORNEY AT LAW

500 FIFTH AVENUE
NEW YORK, NEW YORK 10036

TELEPHONE
212 151-1520

June 4, 1974

*Duer & Taylor, Esqs.
74 Trinity Place,
New York, N. Y., 10006*

Attention: Arthur E. McInerney, Esq.

*Re: Morrissey et al v. Curran, et al
69 Civ. 442*

Dear Arthur:

*In response to your letter of May 31st, I am sending you
the enclosed:*

*letter of November 30, 1972 and
attachments from Mr. Freedman to
Messrs. Karchmer and Segal,*

*letter of October 9, 1973 from Messrs.
Bloom and Epstein to Mr. Freedman,*

*opinion letter of January 3, 1974 to
Messrs. Segal, Freedman and Karchmer.*

*Please let me know what additional information is
requested by you that has not already been made available by
Mr. Cantor or me.*

Very truly yours,

H.
HERMAN E. COOPER

HEC:mj

Enc.

cc: Melvyn L. Cantor, Esq.

FREEDMAN, BOROWITZ AND LORRY
Counselors at Law and Brokers in Securities

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LETTER DATED NOVEMBER 30, 1972.

ABRAHAM FREEDMAN
WILFRED R. LORRY
MILTON M. BOROWITZ
MARTIN J. V. GLENNAN
JOSEPH WEINER
MAYNARD J. LEVIN
ADAM G. ADLER
MARTIN J. BARNES
MORTIMER J. ALTEBERRY
CHARLES F. LOVE
BENTLEY J. ZIEGLER
STANLEY B. LORRY
REUBEN C. DANIELS
CHARLES F. LOVE
ARNOLD LEVIN
EDWARD KATZ
HOWARD J. WEISSHOFF
STANLEY P. KOPPEL
HAROLD A. PATTENMAN
NED D. PHILLIPS
GILBERT GILFORD
MARTIN L. KATZ
STEPHEN BRANDWENT
ALAN B. EPSTEIN
RICHARD A. WEISSBOOD
GEORGE J. CARABELLO, JR.
ARNOLD J. WOLF
SANFORD J. JABLON

November 30, 1972

Mr. Leon Karchmer
Kipnis & Karchmer
521 Fifth Avenue
New York, New York 10017

Mr. Martin E. Segal
1 Chase Manhattan Plaza
New York, New York 10015

Re: Morrissey v. Curran, et al.

Dear Leon and Marty:

As you are aware, I have changed counsel, and Mr. Epstein has now sent in his final bill which is for \$55,000. plus \$1,709.56 for disbursements. Enclosed is a copy of the bill and the breakdown received from Mr. Epstein, and I ask that a check be submitted in payment.

Sincerely yours,

abc

AEF:ngf
Enclosures

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BILL DATED NOVEMBER 22, 1972.

Bloom and Epstein

ATTORNEYS AT LAW

110 EAST 42ND STREET

NEW YORK, N. Y. 10017

November 22, 1972

Abraham E. Freedman, Esq.
Freedman, Borowsky & Lorry
Chestnut Street at 5th
Philadelphia, Pennsylvania

TO: Bloom and Epstein

TO PROFESSIONAL SERVICES RENDERED:

Re: Morrissey et al. v. Curran et al.
from January 14, 1972 to November
10, 1972

\$55,000.00

Disbursements

1,709.56

Total

\$56,709.56

BREAKDOWN OF BILL DATED NOVEMBER 22, 1972.

TIME SHEET RE: MORRISSEY v. CURRAN

HAROLD EISEN

1972		
1/14	- Phones - Conferences re trial date	- 1/2 hr.
1/17	- Phones - Conferences Sovel Conference at N.M.U. to 11:30 P.M.	- 6 hrs.
1/18	- Phone Conference - Freedman, McInerney Conference Milner.	- 1-1/2 hrs.
1/19	- Conference J.B.-Milner.	- 1/2 hr.
1/20	- Phone Conference Sovel.	- 1/2 hr.
1/21	- Conference McInerney re settlement - Phone Conference Freedman, Sovel re Perry payment to Union.	- 3 hrs.
1/25	- Phone Conference-McInerney, Milner, Sovel-Received Notice of Motion for reargument (Ret. 2/8) Study.	- 2 hrs.
1/26	- Prepare Opposition to Motion (re-argument) Phone Conference-McInerney, Sovel, Cooper- Conference Milner.	- 3-1/2 hrs.
1/27	- Prepare Opposition to Motion (re-argument) Phone Conference-Sovel, Conference Milner.	- 2 hrs.
1/28	- Prepare Opposition to Motion - Conference Milner-Phone Conference Sovel.	- 2 hrs.
1/31	- Conference here Sovel-Prepare Opposition to Motion reargument-Received Motion to sever as to Perry-Prepare Judgment-Received memo from McInerney Prepared counter proposed judgment.	- 5-1/2 hrs.
2/1	- Phone Conference McInerney-Conference Sovel, Milner-Prepared Memos in Opposition. Served prepared Judgment.	- 4 hrs.
2/2	- Conference Milner-Prepared memos (reargument, etc.) Served on all attorneys-Phone Conference Sovel.	- 3 hrs.
2/3	- Conference N.M.U.-Freedman, Curran-Render bill for fees to 1/12/71-Received Proposed judgment from Ingram-Study.	- 3-1/2 hrs.
2/4	- Phone Conference Karchman, Goodman, Sovel - Conference Milner.	- 1 hr.
2/7	- Conference Milner-Received proposed Judgment from McInerney-Study.	- 1-1/2 hrs.
2/8	- Attended U.S. District Court re motions for reargument-Judge, etc., Referred to Bonsel, J. & submitted Phone conference McInerney re trial date-Phone Conference Sovel - Conference Milner	- 5 hrs.

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OF BILL DATED NOVEMBER 22, 1972

ce Parker (Bonsal's Sec.)

Plaintiff's aff'd re
tudy.

- 2-1/2 hrs.

ce Sovel-Conference

opposition to Petition

- 2 hrs.

ce Sovel-Conference with

opposition to fee appli-

- 3 hrs.

avit re plaintiffs dis-

dy-Conference Sovel-

ition.

- 2-1/2 hrs.

EE with Goodman-Served

(Fee Application)

= 1 hr.

ce with Sovel-Received

all records

- 1/2 hr.

ce with Reardon, Wall,

- 1 hr.

ce with Parker, (Reargument

n, & Sovel-Conference with

- 1-1/2 hrs.

ce with Reardon

- 1/2 hr.

ce with Sovel-Trial Date

- 1/2 hr.

ce with Sovel-Cantor

- 1/2 hr.

iff's Notice of Appeals

ce with Sovel & Goodman

- 1 hr.

Warren, Milner & JB

- 1-1/2 hrs.

Milner

- 1/2 hr.

s Notice of Appeal

ce with Sovel

- 1/2 hr.

M.U.-Phone Conference

ovel-Memo to Office Staff

- 4 hrs.

ce with Sovel-Prepare for

ference with Cantor, Paswol

erence with Milner

- 5 hrs.

al-Conference with Milner

Conference with Paswol

- 3 hrs.

al-Conference with Milner

here re Exhibits-Phone

Sovel

- 3-1/2 hrs.

1972

4/7

BREAKDOWN OF

- Prepare for Trial-Confer
Milner & Warren-Phone Co
Paswol.

4/10

- Trial Adjourned-Conferen
Freedman, Curran & Wall
with Paswol-Conference h
& Milner.

4/11

- Phone Conference with Mo
Wall, Paswol & Freedman

4/13 - Prepare.

4/12

- Conference N.M.U. - Prep

4/13

- Attended at Trial - U.S

4/14

- Attended at Trial - U.S
Adjourned to 5/1 - Confe

4/17

- Phone Conference with So
Cantor - Original exhibi

4/18

- Conference here with So
for Trial.

4/21

- Received Freedman's Tes
Study - Send To Sovel. I
with Sovel.

4/24

- Phone Conference with So
with Warren - Prepare f

4/25

- Conference here with Fr
Prepare for Trial.

4/27

- Conference here with So

5/1

- Attended at Trial-U.S D
Continued Trial, Motion
conclusion of Plaintiff

5/2

- Received Minutes of Tri
Study - Conference with
conference with Sovel -

5/3

- Prepare Briefs - Phone
McInerney.

5/4

- Prepare Briefs

5/5

- Conference here with So
Briefs - Phone Conferen

5/8

- Prepare Briefs.

5/9

- Prepare Briefs - Phone
Sovel - Study New Trust

5/10

- Prepare Briefs - Phone
Cantor & Briet.

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BILL DATED NOVEMBER 22, 1972

rence with

onference with

- 2-1/2 hrs.

nce at N.M.U.

phone conference

here with Paswol

- 6-1/2 hrs.

McInerney, Sovel,

- Trial set for

- 5 hrs.

pare for Trial

- 4-1/2 hrs.

. District Court

- All Day

. District Court

erence at N.M.U.

- All Day

ovel, Paswol &

its here.

- 2 hrs.

ovel - Prepare

- 2-1/2 hrs.

timony (4/13-4/14)

Phone conference

- 2 hrs.

ovel - Conference

or Trial.

- 3 hrs.

eedman & Sovel

- 5-1/2 hrs.

ovel.

- 2-1/2 hrs.

istrict Court-

to Dismiss at

's case.

- All Day

al (4/13-4/14)

Milner - Phone

Prepare Briefs

- 7 hrs.

Conference with

- 2-1/2 hrs.

- 1-1/2 hrs.

ovel - Prepare

ce with McInerney.

- 3-1/2 hrs.

- 3 hrs.

Conference with

Agreement.

- 3-1/2 hrs.

Conference with

- 2-1/2 hrs.

Three Full Days

tal - 139 hrs.

1972		BREAKDOWN OF BILL DATED NOVEMBER 22, 1972	
5/11	- Prepare Briefs.	-	1-1/2 hrs.
5/15	- Phone Conference with Sovel -		
	Conference with J.B.	-	1/2 hrs.
5/16	- Conference with Milner - Prepare		
	Briefs.	-	2-1/2 hrs.
5/17	- Phone Conference with McInerney -		
	Conference with Milner - Prepare		
	Briefs.	-	1-1/2 hrs.
5/18	- Received minutes (5/1) - Study -		
	Phone Conference with Sovel &		
	McInerney - Prepare Briefs.	-	4 hrs.
5/19	- Study Minutes (5/1) - Prepare		
	Briefs.	-	3 hrs.
5/22	- Conference here with Sovel -		
	Prepare Briefs.	-	2-1/2 hrs.
5/23	- Check law - Prepare Briefs.	-	1-1/2 hrs.
5/24	- Phone Conference with Sovel.	-	1/2 hr.
5/25	- Conference here with Sovel - Phone		
	Conference with Cantor & Goodman -		
	Prepare Briefs.	-	4 hrs.
5/26	- Prepare Briefs - Phone Conference		
	with Cantor & Goodman - Exchange		
	Drafts - Conference with Cantor here.	-	4 hrs.
5/30	- Phone Conference with Sovel, Cantor		
	& Goodman (week extension to file		
	Briefs).	-	3 hrs.
5/31	- Phone Conference with Cantor & Sovel		
	Prepare Briefs - Prepare letter to		
	Bonsal - Conference with Warren.	-	3 hrs.
6/1	- Serve & File Briefs - Received		
	Siegel Brief - Study.	-	1-1/2 hrs.
6/5	- Phone Conference with Sovel.	-	1/2 hr.
6/7	- Received Karshman Brief - Study.	-	1 hr.
6/8	- Study Karshman Brief - Send to Sovel.	-	1 hr.
6/9	- Received Plaintiff's Brief - Study -		
	Send to Sovel - Phone conference with		
	Sovel.	-	2-1/2 hrs.
6/12	- Conference with Sovel here. Phone		
	Conference with Cantor - Prepare		
	Reply Brief.	-	4-1/2 hrs.
6/13	- Prepare & Serve Reply Brief -		
	Phone Conference with Parker -		
	Received Siegel's Reply Briefs - Study.	-	3 hrs.

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1972

BREAKDOWN OF BILL DATED NOVEMBER 22, 1972

6/14	- Phone Conference with Cantor re Perry Appeal - Phone Conference with Sovel - Received Reply Brief, Karshman - Send to Sovel - Study.	- 2 hrs.
6/19	- Phone Conference with Cantor re Perry.	- 1/2 hr.
6/20	- Phone Conference with Cantor & Sovel re Perry.	- 1/2 hr.
6/29	- Received Decision - Study - Phone Conference with Parker - Sovel & Freedman here.	- 4 hrs.
6/30	- Conference with JB - Phone Conference with Parker re Trial Date - Set for 7/12 - Phone Conference with Cantor, Cooper, Freedman, McInerney, Sovel.	- 3 hrs.
7/5	- Check File - Study Depositions - Phone Conference with Sovel - Prepare for Trial.	- 4-1/2 hrs.
7/6	- Conference here with Wall, Freedman, Sovel - 11 A.M. - Conference here with all defendants & Counsel - Prepare for Trial.	- All Day
7/7	- Conference here Elkin, Sovel, Cooper- Phone Conference with Cantor, Pasvol.	- 4 hrs.
7/10	- Phone Conference with Sovel, Cantor, Bonsal, -Conference with Milner- Prepare for Trial.	- 2 hrs.
7/11	- Conference here with Sovel, Wall, Milner- Phone Conference with Elkin, Pasvol- Prepare for Trial.	- 3-1/2 hrs.
7/12	- Attended Trial-United States District Court.	- All Day
7/14	- Conference here Sovel-Sent Transit Agreement and additional data to Bonsal and all attorneys-Check file re: fee application.	- 3 hrs.
7/17	- Phone Conference Sovel-Phone Conference Bonsal's Chambers re: Conference.	- 1-1/2 hrs.
7/18	- Phone Conference Lem(Bonsal's Sec'y)- Prepare letter to Bonsal re: additional information-Phone Conference Sovel.	- 1 hr
7/19	- Conference Milner re: hearing-Lem report- No hearing.	- 1/2 hr.
7/20	- Conference Milner-Deliver letter and additional Exhibits to Bonsal and all attorneys.	- 1-1/2 hrs.
7/21	- Phone Conference McInerney re: rebutal.	- 1/4 hr.
7/25	- Phone Conference with Sovel.	- 1/4 hr.

BREAKDOWN OF BILL DATED NOVEMBER 22, 1972

1972		
7/27	- Received McInerney's letter requesting rebuttal - Study - Send to Sovel - Conference with Milner.	- 1/2 hr.
7/28	- Phone Conference with Sovel	- 1/2 hr.
7/31	- Conference here with Sovel re rebuttal; Phone Conference with Cantor & Cooper; Conference with Milner.	- 2 hrs.
8/3	- Received Trial Minutes - Study - Phone Conference with Sovel - Phone Conference with Sovel, Cantor re Perry.	- 2-1/2 hrs.
8/4	- Conference here with Sovel - Prepare reply letter to Bonsal re rebuttal - Phone Conference with Parker.	- 2 hrs.
8/7	- Phone Conference with Cantor, Sovel, & Parker - Conference with Milner - Redraw and send letter to Bonsal.	- 3-1/2 hrs.
8/8	- Conference here with Sovel - Prepare Brief.	- 4-1/2 hrs.
8/10	- Phone Conference with Sovel - Prepare Brief.	- 2 hrs.
8/11	- Phone Conference with Sovel - Prepare Brief.	- 1-1/2 hrs.
8/14	- Phone Conference with Sovel - Prepare Brief - Received report re Perry.	- 3-1/2 hrs.
8/15	- Prepare Brief.	- 3 hrs.
8/17	- Phone Conference with Sovel - Prepare, serve and file Brief.	- 2 hrs.
8/18	- Received Notice of Substitution (Perry) Received Siegel Brief.	- 1-1/2 hrs.
8/21	- Received plaintiff's Brief - Study - Received Karshmer Brief - Study - Phone Conference with Sovel & Parker; Conference with Milner.	- 3 hrs.
8/22	- Phone Conference with Sovel; Conference with Milner - Prepare Reply Brief.	- 3-1/2 hrs.
8/24	- Conference here with Freedman - Prepare Reply Brief - Received report re Perry.	- 4 hrs.
8/25	- Conference with Milner - Prepare Reply Brief.	- 2 hrs.
8/28	- Received plaintiff's Reply Brief - Study - Prepare, serve & file Reply Brief - Conference with Milner.	- 2 hrs.
8/31	- Received plaintiff's letter to Bonsal; Study.	- 1/2 hr.

TIME

BREAKDOWN OF BILL DATED NOVEMBER 22, 1972

1972

9/6	- Phone conference - Sovel.	- 1/2 hr.
10/11	- Phone conference - Sovel.	- 1/2 hr.
10/27	- Decision rendered - Pick up at Judge's Chambers - phone conference - Sovel.	
	Conference here-Sovel - Study Decision	- 4 hrs.
10/30	- Received plaintiffs' proposed Decree - Study (Ret. 11/1/72) - Phone Conference, Sovel, Cantor, Wall & Freedman - Conference w/Milner - draft counter proposed Decree	-5-1/2 hrs.
10/31	- Phone conference - Freedman, Sovel, McInerney, Cantor, Cooper - Phone conference - Lem (Bonsal's Sec'y.) - Decree entry, ext. to 11/3 - prepare counter proposed Decree and Memo	-3-1/2 hrs.
11/1	- Conference here-Sovel - prepare counter proposed Order and Memo - Phone conference - Wall, Conference with JBB	-4-1/2 hrs.
11/2	- Conference here-Sovel - Prepared counter proposed Order and Memo (Final) - Phone conference - Freedman	5 hrs.
11/3	- Serve and file proposed Judgment and Memo - Phone conference - Sovel. Phone conference - McInerney.	-2-1/2 hrs.
11/6	- Phone conference - Sovel.	1/4 hr.
11/7	- Received plaintiffs' Supplemental Affidavit and Memo - Study - send copies to Sovel	-1-1/2 hrs.
11/10	- Phone conference - Sovel, Conference - Milner	- 1/2 hr.

Final Total - Five Full Days
288-3/4 hrs.

28.25

BREAKDOWN OF BILL DATED NOVEMBER 22, 1972

1972

1/18	-	Conf. H.E.	15 min.
1/19	-	Conf. H.E. & J.B.B.	30 min.
1/25	-	Conf. H.E. re: Motion for Rearg.	15 min.
1/26	-	Conf. H.E.	30 min.
1/27	-	Conf. H.E.	15 min.
1/28	-	Conf. H.E.	15 min.
2/1	-	Conf. H.E.	30 min.
2/2	-	Conf. H.E.	30 min.
2/7	-	Conf. H.E.	45 min.
2/8	-	In Fed. Dist. Court, Motion for Rearg. referred to Bonsal	- 1 hr.
2/11	-	Conf. H.E.	
2/14	-	Conf. H.E., Sovel re: Brief - attys.fees	- 1-1/2 hr.
3/8	-	Conf. H.E.	1-1/2 hr.
4/4/	-	Conf. H.E.	2 hrs.
4/5	-	Conf. H.E.	2 hrs.
4/6	-	Conf. H.E.	1-1/2 hr.
4/7	-	Conf. H.E.	30 min.
4/10	-	Conf. H.E., Pasvol	- 2-1/2 hrs.
5/1	-	Trial	All Day
5/2	-	Conf. H.E.	2 hrs.
5/16	-	Conf. H.E.	1-1/2 hr.
5/17	-	Conf. H.E.	30 min.
7/7	-	Conf. Sovel, Pasvol, Cantor & H.E.	- 3 hrs.
7/10	-	Conf. H.E.	30 min.
7/11	-	Conf. H.E., Wall, Sovel	- 2 hrs.
7/12	-	Trial	All Day
7/19	-	Conf. H.E.	30 min.
7/20	-	Conf. H.E.	1-1/2 hr.
7/27'	-	Conf. H.E.	15 min.
7/31	-	Conf. H.E.	15 min.
8/21	-	Conf. H.E.	1 hr.
8/22	-	Conf. H.E.	1 hr.
8/25	-	Conf. H.E.	15 min.
8/28	-	Conf. H.E.	30 min.
10/30	-	Conf. H.E.	1 hr.
11/10	-	Conf. H.E.	30 min.

2 Full Days
32-1/2 hrs.

117.50

177a

LETTER DATED OCTOBER 9, 1973.
LAW OFFICES

Bloom and Epstein

110 EAST 42ND STREET

NEW YORK, N. Y. 10017

(212) 687-6050

CABLE ADDRESS: HANJERLAW

HAROLD EPSTEIN
JEREMIAH B. BLOOM
BERNARD M. BLOOM
ROBERT M. MILNER
WARREN B. PESETSKEY

October 9, 1973

Abraham E. Freedman, Esq.
Freedman, Borowsky & Lorry
5th & Chestnut Streets
Philadelphia, Pa.

Dear Abe:

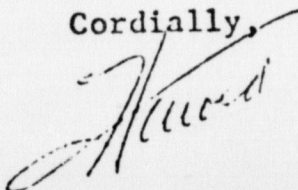
In accordance with your telephonic request of October 4th, we have reviewed our files, read the various briefs and memoranda submitted to the Court and studied the transcript of the testimony at the various hearings to determine the portion of the services rendered by this office specifically relating to your consent to the payment to Perry and the overall involvement of the Trustees with regard to such payment.

In our opinion, the time spent by this office and services rendered specifically in regard to the Perry situation constitutes no more than 7% to 10% of the total time spent and the services rendered to the Trustees in all of the issues involved and resolved in the action.

I trust that this information will be of help to you and I await your early advices.

May I take this opportunity to wish you a healthful and happy New Year.

Cordially,



HE:J

178a

LETTER DATED JANUARY 3, 1974.

WILLKIE FARR & GALLAGHER

1 CHASE MANHATTAN PLAZA

New York, N. Y. 10005

212-248 1000

Cable Conveyance New York

Telex: 233780 (RCA)

12-7679 (WU)

January 3, 1974

Mr. Martin E. Segal
1 Chase Manhattan Plaza
38th Floor
New York, New York 10005

Abraham E. Freedman, Esq.
Lafayette Building
8th Floor
Chestnut Street at Fifth
Philadelphia, Pa. 19106

Mr. Leon Karchmer
521 Fifth Avenue
New York, New York 10017

Re: National Maritime Union
Officers' Pension Trust-
Payment of Trustee's Legal Fees

Gentlemen:

You have furnished me with a copy of the Statement of legal fees and disbursements dated November 22, 1972 (the "Statement") in the amount of \$56,709.56 rendered by Bloom and Epstein to Mr. Abraham E. Freedman covering professional services rendered in representing him as a defendant in *Morrissey et al. v. Curran et al.* (first action) (the "Morrissey Action") during the period from January 14, 1972 to November 10, 1972.

LETTER DATED JANUARY 3, 1974

You have requested my opinion as to whether it is proper for the National Maritime Union Officers' Pension Fund (the "Fund") to pay the amount set forth in the Statement. Further, if it is not proper for the Fund to pay such entire amount, you have asked me to advise you as to what portion of such amount may properly be paid from the Fund.

In connection with this opinion, I have reviewed the Agreement and Declaration of Trust between the National Maritime Union and the Trustees (the "Trust Agreement"), as presently in effect, the time sheets of Messrs. Epstein and Milner which accompanied the Statement and relevant opinions, stenographic minutes of hearings, briefs, memoranda, affidavits and other court papers in the Morrissey action as well as other material in the files of Bloom and Epstein relating to the Morrissey action. In addition, I have had discussions with Messrs. Epstein, Milner, Freedman and Sovel.

Under Article III, Paragraph C, Section 8 of the Trust Agreement, the Trustees in their discretion are authorized to contest the validity of any claim made against the Fund and under Article III, Paragraph C, Section 9 thereof, the Trustees are empowered to obtain and determine compensation for, among others, legal counsel as they may in their discretion find necessary. Thus, the Trustees are authorized to retain legal counsel in defense of any claim made against the Fund and to have the Fund pay the reasonable legal fees and expenses incurred on behalf of the Trustees in connection therewith.

Under the above provisions of the Trust Agreement and under New York law which in accordance with Article V, Paragraph 5 of the Trust Agreement governs the validity or construction thereof and of the acts of the Trustees thereunder, the Trustees were authorized to defend the Morrissey action in order to prevent a loss to the Fund and they were justified in retaining counsel and in incurring reasonable expenses in connection therewith, which expenses may properly be paid by the Fund. Further, the Trustees may properly pay out of the Fund the expenses of litigation incurred in an attempt to subject a Trustee to surcharge if the Trustee is successful in his defense. However, where a Trustee is subjected to surcharge, the legal expenses incurred by the Trustee relating to the matter on which surcharged may not be paid by the Fund but must be paid by the Trustee personally.

LETTER DATED JANUARY 3, 1974

In his opinion dated October 26, 1974 in the Morrissey action, Judge Bonsal held that Mr. Freedman was subject to surcharge for the lump sum pension paid to William Perry. Such holding was affirmed by the United States Court of Appeals, Second Circuit on June 18, 1973. By reason of this surcharge against Mr. Freedman, and because a significant portion of the amount set forth in the Statement relates to the matter on which Mr. Freedman was surcharged (the "Perry matter"), it is my opinion that the entire amount set forth in the Statement may not properly be paid by the Fund.

The amount set forth in the Statement relates to legal services covering a number of matters involved in the Morrissey action in addition to the Perry matter. Under New York law courts have apportioned a Trustee's legal fees between amounts which may properly be paid by the trust fund (for example, where a Trustee successfully resists a surcharge claim or where services are unrelated to the matters on which the Trustee is sought to be surcharged) and expenses which are attributable to the matter on which the Trustee is surcharged and which, as stated above, may not be paid by the trust fund. On this basis, it is my further opinion that Mr. Freedman is entitled to have the Fund pay that portion of the amount set forth in the Statement which is not attributable to the Perry matter.

Based on a careful analysis of the time charges of Bloom and Epstein which accompanied the Statement and an examination of the relevant documents, it is my conclusion that 40% of the amount set forth in the Statement, namely, \$22,000 for legal services and \$683.82 for disbursements, is attributable to the Perry matter. This total amount of \$22,683.82 may not be paid by the Fund and must be paid by Mr. Freedman personally. The balance of the amount set forth in the Statement, namely, \$33,000 for legal services and \$1,025.74 for disbursements, is not attributable to the Perry matter. This total amount of \$34,025.74 may properly be paid by the Fund. A schedule is attached hereto setting forth the basis on which the above allocation was derived.

Very truly yours,

Thomas S. Monfried

TSM/kg

Attachment

181a

SCHEDULE, ATTACHED TO LETTER, DATED JANUARY 3, 1974.

ALLOCATION OF FREEDMAN'S LEGAL FEES
TO PERRY MATTER

<u>Dates (1972)</u>	<u>Summary of Matters Involved</u>	<u>Percent Allocable to Perry Matter</u>	<u>No. of Hours Charged</u>	
			<u>Epstein</u>	<u>Milner</u>
1/11 - 1/25	Post-trial activity following Bonsal decision (1/11/73)	10	13	1
1/25 - 2/16	Motion for reargument; preparation of judgment; counsel fees	10	43	5.25
2/17 - 3/15	Preliminary pretrial for hearing on defendants' personal liability	10	12	1.5
4/4 - 4/12	Pretrial preparation for hearing	30	30	8.5
4/13 - 4/14	Hearing - plaintiffs' evidence	30	20	0
4/17 - 4/27	Additional pretrial preparation for hearing	30	17.5	0
5/1	Hearing - further plaintiffs' evidence	30	10	10
5/2 - 8/20	Post-hearing activity; briefs and reply briefs on defendants' motion to dismiss	30	72	4

Continued

SCHEDULE, ATTACHED TO LETTER, DATED JANUARY 3, 1974

<u>Dates (1972)</u>	<u>Summary of Matters Involved</u>	<u>Percent Allocable to Perry Matter</u>	<u>No. of Hours Charged Epstein</u>	<u>Milner</u>
6/29 - 7/11	After Bonsal decision (6/29/72), pretrial preparation for hearing (Perry matter only remaining issue)	90	31	5.5
7/12	Hearing-defendants' evidence on Perry matter	90	10	10
7/14 - 8/7	Rebuttal; additional exhibits	30	19	2.5
8/8 - 9/6	Post-hearing briefs and reply briefs on Perry matter	90	33.5	2.75
10/11 - 11/10	Post-trial activity following Bonsal decision (10/28/72); decrees; judgment	30	27.75	1.5
Summary:				
	<u>Epstein</u>			
	10% x \$150 x 68 hours = \$1,020.00			
	30% x \$150 x 196.25 hrs. = \$8,831.25			
	90% x \$150 x 74.5 hrs. = \$10,057.50			
	<u>\$19,908.75</u>			
	<u>Milner</u>			
	10% x \$75 x 7.75 hours = \$ 58.125			
	30% x \$75 x 26.5 hours = \$ 596.25			
	90% x \$75 x 18.25 hrs. = \$1,231.875			
	<u>\$1,886.25</u>			

Total amount of legal fees allocated to Perry matter - \$19,908.75
1,886.25
\$21,795.00

Percent of legal fees allocated to Perry matter - $\frac{\$21,795}{\$55,000} = 39.6\%$ (rounded to 40%)

Notes: (1) For each full court day for which no hours are specified on time sheets, 10 hours were used.

(2) Based on 338.75 hours charged by Mr. Epstein and 52.5 hours by Mr. Milner, hourly rates of \$150 for Mr. Epstein and \$75 for Mr. Milner were used.

183a

LETTER DATED JUNE 10, 1974.

June 10, 1974

Honorable Dudley B. Bonsal
United States District Judge
United States District Court
Foley Square
New York, New York 10007

Re: *Morrissey, et al v. Curran, et al*
69 Civ. 442

Dear Judge Bonsal:

In accordance with your instructions I have met with the respective counsel for Messrs. Segal and Karchmer in an effort to arrive at a settlement with respect to the issues raised by the motions to reargue the decision of May 1, 1974.

In this connection I have reviewed the papers made available to me by Messrs. Simpson, Thacher & Bartlett and Herman Cooper together with the supplemental affidavit of Roy Reardon sworn to the 4th day of June, 1974.

I have asked to see copies of certain documents referred to in the bills submitted to Messrs. Karchmer and Segal and referred to in the time sheets of Simpson, Thacher & Bartlett. I have told counsel that it seemed to me that they owed it to their respective clients and to the Court to show me the documents I requested. After all they constituted a part of the services, which are now at issue.

However, my request has been refused on the ground that certain of those documents requested are not relevant.

Under these circumstances, I cannot in good conscience, make a recommendation without a direction from the Court that the documents sought should be turned over to me. (See, for example, copies of my letters of May 21, 1974 and May 31, 1974 enclosed herewith. Items 3, 4 and 5 have not been delivered. See also separate memo re additional documents requested after review of Simpson, Thacher & Bartlett time sheets.)

LETTER DATED JUNE 10, 1974

It should also be now noted that, in my judgment, there has been a material misrepresentation (implied if not express) to the Court on the subject of the attorneys' fees paid out of the trust. In the first place Exhibit 9 has been brought down to date (a photostatic copy is herewith enclosed and marked Exhibit 9A). It now appears the \$295,396.84 has already been paid out of the fund and that in excess of \$19,500.00 will be but has not yet been billed by Simpson, Thacher & Bartlett and Herman Cooper. That means \$314,896.04 total.

It also now appears that \$85,829.11 has been paid to Bloom and Epstein out of the fund for Freedman's defense notwithstanding his affidavit sworn to the 30th day of January, 1974. So that if he did pay Bloom and Epstein \$22,687.97, as he claims in that affidavit, they were paid \$108,517.88 plus whatever they were paid by Messrs. Curran and Wall, if anything.

Bloom and Epstein did not participate in this litigation until after the first round of appeals and petitions to the Supreme Court had been decided and did not participate in the second round of appeals and petitions. In other words, they appeared after the order of July 6, 1970 and were out after the entry of the judgment from which the second appeals were taken.

The \$314,896.04 is only what has been billed (or will be billed to the fund); it does not include any charges for Judge Rifkind, or for Mr. Freedman's representation (at the early stages of the litigation), or for Bromsen, Gammerman, Altier & Wayne, or the \$22,687.97 Mr. Freedman claims to have paid Bloom and Epstein personally.

This letter is preliminary to a more formal report which will be submitted to the Court in affidavit form.

Accordingly, I respectfully request that the Court direct that the documents requested in my said attached letters and memorandum be turned over to me.

Respectfully yours,

AEM/cw

Enclosures

cc: Bromsen, Gamerman, Altier & Wayne
Simpson, Thacher & Bartlett
Charles Sovel, Esq.
Herman E. Cooper, Esq.

185a

LETTER DATED JUNE 26, 1974.

June 26, 1974

Honorable Dudley B. Bonsal
United States District Judge
United States District Court
Foley Square
New York, New York

Re: *Morrissey, et al v. Curran, et al*
69 Civ. 442

Dear Judge Bonsal:

Preliminary to our meeting, we respectfully
call your attention to *Yablonski v. United Mine*
Workers of America 454 F. 2d 1036 (USCA, D.C.C., 1971,
McGowan, Robinson and Wilkey, C.J.)

Respectfully yours,

AEM/cw

BY HAND

cc: Bromsen, Gammernan, Altier & Wayne
Simpson, Thacher & Bartlett
Charles Sovel, Esq.
Herman E. Cooper, Esq.

C
O
P
Y

186a

LETTER DATED JULY 1, 1974.
SIMPSON THACHER & BARTLETT
ONE BATTERY PARK PLAZA
NEW YORK 10004

July 1, 1974

Re: Morrissey v. Curran

Honorable Dudley B. Bonsal
United States District Judge
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Dear Judge Bonsal:

Enclosed are the following:

1. My affidavit with respect to the legal fees and disbursements relating to the representation of Martin E. Segal.
2. A Xerox copy of the ribbon copy of the letter dated December 21, 1972, from Messrs. Segal and Karchmer to Abraham E. Freedman, Esq.
3. A Xerox copy of a carbon copy of a letter dated August 12, 1970, from Simpson Thacher & Bartlett to Messrs. Segal and Karchmer.

187a

LETTER DATED JULY 1, 1974

Honorable Dudley B. Bonsal

-2-

July 1, 1974

I have mailed copies of my affidavit to all counsel in the action. Items 2 and 3 above are delivered to your Honor in camera pursuant to your request the other day.

Respectfully,

Roy L. Reardon

Roy L. Reardon

RLR:jme
Enc.

cc: Joseph Altier, Esq.
Messrs. Bromsen Gammernan Altier
& Wayne
450 Seventh Avenue
New York, New York 10001

Arthur E. McInerney, Esq. ✓
Messrs. Duer & Taylor
74 Trinity Place
New York, New York 10006

Abraham E. Freedman, Esq.
36 Seventh Avenue
New York, New York

Herman E. Cooper, Esq.
500 Fifth Avenue
New York, New York

LETTER DATED DECEMBER 21, 1972 ANNEXED TO FOREGOING
LETTER DATED JULY 1, 1974.

December 21, 1972

Abraham E. Freedman, Esq.
Freedman, Borowsky & Lorry
Lafayette Building
Chestnut & 5th Streets
Philadelphia, Pennsylvania 19106

Re: Morrissey v. Curran
(NJU Officers Pension Plan)

Dear Abe:

In a discussion with Simpson Thacher & Bartlett, with respect to various matters relating to the captioned litigation, we talked about the bills from legal counsel. This brought us to the question of the recent bill from Bloom & Epstein. It was the opinion of our counsel that there was a legal question as to whether we can approve the Bloom & Epstein bill for payment in view of Judge Bonsal's decision. Counsel advised us that the bill can be paid after your appeal is won.

We want to approve the Bloom & Epstein bill. However, in view of the court's general and specific positions in this litigation and the need to avoid any possibility of our having to defend allegations based on the fact that we didn't seek independent legal advice and follow it, we have no alternative but to withhold approval of the Bloom & Epstein bill, at least for the present. Because there is a legal question as to the propriety of the Trustees approving this bill, we would be satisfied with a legal opinion from an independent attorney - like Judge Rifkin - advising the Trustees that the Bloom & Epstein bill can be approved for payment.

As you can imagine, Abe, we are very troubled by the turn of events. However, we have no sensible alternative but to follow the advice of our legal counsel.

With every good wish.

Sincerely,

Martin E. Segal

Martin E. Segal

Leon Karchmer

Leon Karchmer

189a

LETTER DATED JULY 3, 1974 ADDRESSED TO HON.
DUDLEY B. BONSAI.

HERMAN E. COOPER

ATTORNEY AT LAW

500 FIFTH AVENUE
NEW YORK, NEW YORK 10001

TELEPHONE
212 754-1520

July 3, 1974

Honorable Dudley B. Bonsal
United States District Judge
United States District Court
Southern District of New York
Foley Square,
New York, New York 10007

Re: Morrissey et al. v. Curran et al.

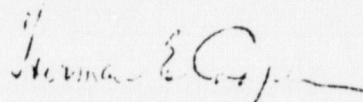
Dear Judge Bonsal:

As requested, I am enclosing the following:

1. My affidavit with respect to legal fees and disbursements relating to the representation of Leon Karchmer, including suggested allocation to the Perry matter,
2. Photocopies of letter, with enclosures, to Duer & Taylor, attention of Arthur E. McInerney.

Copies of my affidavit, including letter to Duer & Taylor, have been mailed to all counsel in the action.

Respectfully,



HERMAN E. COOPER

HEC:mj

Copy to: All Counsel

190a

LETTER DATED JULY 3, 1974 ADDRESSED TO DUER &
TAYLOR, ESQS.

HERMAN E. COOPER

ATTORNEY AT LAW

500 FIFTH AVENUE
NEW YORK, NEW YORK 10036

TELEPHONE
212 354-1520

July 3, 1974

Duer & Taylor, Esqs.
74 Trinity Place,
New York, N. Y., 10006

Attention: Arthur E. McInerney, Esq.

Re: Morrissey et al. v. Curran et al.

Dear Arthur:

In accordance with your request before Judge
Bonsal, I am herewith enclosing photocopies of the following:

1. statement for services by Messrs.
Bloom and Epstein, dated February 3,
1972,
2. statement for services by Messrs.
Weil, Gotshal & Manges, dated
October 30, 1973, and
3. statement for services by Messrs.
Willkie Farr & Gallagher, dated
March 11, 1974.

In addition, you will find copy of my affidavit being
submitted to Judge Bonsal as requested during the conference of
June 28, 1974, confirming fees received from the NMU Officers'
Pension Trust and proposed allocation therefrom for the Perry
matter.

Very truly yours,

HERMAN E. COOPER

HEC:mf

Enc.

Copy to: All Counsel

191a

BILL DATED FEBRUARY 3, 1972.

Bloom and Epstein
ATTORNEYS AT LAW
110 East 42nd Street
New York, N. Y. 10017

February 3, 1972

Abraham E. Freedman, Esq.
Freedman, Borowsky & Lorry
Chestnut Street at 5th
Philadelphia, Pennsylvania

TO: Bloom and Epstein

To Professional Services Rendered:

Re: Morrissey, Curran, et al from October 10, 1970 to January 12, 1971 as per list attached.		\$50,000.00
Paid on account 11-30-70	\$5,000.00	
Paid on account 3-9-71	<u>\$7,500.00</u>	<u>12,500.00</u>
		\$37,500.00
Disbursements advanced to dated		<u>1,371.53</u>
		\$38,871.58

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972.

1970

- 10/7 - Conference here Sovel and Freedman. - 3½ hrs.
- 10/8 - Prepared stipulations of substitution; Telephone conferences Sovel; Conference Bonsal, J.; Telephone conferences Freedman; study filed. - 5½ hrs.
- 10/9 - Conference Karchmer's office re proposed answers to interrogatories; conference Freedman; prepared affidavits re substitution; reviewed file. - 8 hrs.
- 10/12 - Reviewed files. - 3 hrs.
- 10/13 - Filed substitution; telephone conferences Montana; telephone conferences Sovel; Conference here Sovel and Freedman; prepared answers to interrogatories; telephone conference Freedman; conference here J.B. - 5½ hrs.
- 10/14 - Telephone conferences McInerney, Montana, Sovel, Freedman; received proposed answer to interrogatories of trustees; studied; prepared answers to interrogatories Freedman, Curran, Wall. - 7 hrs.
- 10/15 - Received exhibits to be attached to interrogatories; telephone conferences Montana re proposed changes to answers to interrogatories suggested by Karchmer; prepared changes; telephone conferences McInerney, Sovel; served answers to interrogatories from plaintiff's attorneys; studied law. - 6 hrs.
- 10/16 - Served answers to interrogatories on co-defendants, cc. to Sovel, Freedman; served substitution of attorneys; checked law. - 3½ hrs.

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BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1970

10/19 - Telephone conferences Sovel re verifications exhibits; telephone conference Freedman; checked law. - 2 hrs.

10/20 - Checked law; telephone conferences Montana re answers to interrogatories. - 1 hr.

10/22 - Received copy of pension plan; studied; checked law. - 2 hrs.

10/23 - Received Wall's verification; sent to McInerney; telephone conference McInerney re date of deposition; telephone conference Sovel, Freedman; studied law. - 1½ hrs.

10/27 - Telephone conference Freedman. - ½ hr.

10/30 - Telephone conferences McInerney re deposition dates; telephone conference Sovel. - ½ hr.

11/2 - Telephone conference Freedman, Sovel, re deposition. - ½ hr.

11/3 - Studied various documents, preparation for Curran deposition. - 2 hrs.

11/4 - Conference at NMU with Curran, Freedman, Sovel, et al; telephone conference McInerney re date of Curran deposition. - 5½ hrs.

11/6 - Attended at NMU re deposition of Curran; telephone conferences McInerney re setting date for rulings; telephone conferences Parker (Bonsal's secretary) re same. - 8 hrs.

11/9 - Telephone conferences Parker re date for rulings set for 11/12 at 4:00 P.M.; telephone conferences McInerney, Montana, Spier, Sovel. - 2 hrs.

194a

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1970

11/11 - Telephone conferences McInerney, Freedman. - ½ hr.

11/12 - Delivered exhibits introduced in Curran deposition to McInerney; received minutes of said deposition; studied. - 2½ hrs.

11/13 - Attended at U. S. District Court, Southern District, before Bonsal, J.; argued rulings; telephone conference Freedman, Sovel. - 4 hrs.

11/16 - Received minutes of court's rulings; studied same; telephone conference Freedman. - 2½ hrs.

11/18 - Conference Curran, Freedman, et al, at NMU A. M.; deposition Curran continued at NMU 2:00 P. M. - All Day

11/19 - Telephone conferences Wall, Montana, Sovel, McInerney, Freedman. - 1½ hrs.

11/20 - Telephone conferences Sovel, Freedman, Wall; received exhibits from Sovel. - ¾ hr.

11/23 - Telephone conferences Sovel. - ½ hr.

11/24 - Received minutes of second deposition Curran; studied; telephone conferences McInerney re date for rulings. - 2 hrs.

11/25 - Attended at NMU 8:30 A. M.; conferred with Wall, Freedman, Sovel, re Wall's deposition 11:30 A. M. - All Day

11/30 - Telephone conferences McInerney re Curran deposition rulings. - ½ hr.

12/3 - Telephone conferences Montana re court rulings; telephone conferences Wall. - ½ hr.

12/4 - Telephone conferences Sovel re Curran rulings, Wall deposition. - ½ hr.

195a

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1970

- 12/9 - Telephone conferences McInerney, re Curran deposition rulings. - ½ hr.
- 12/10 - Telephone conferences McInerney re date Curran deposition rulings set for 12/14; telephone conferences Sovel; prepare exhibits to Wall deposition. - 1 hr.
- 12/11 - Telephone conferences Sovel, Curran, re court rulings; conference here J. B. - 1 hr.
- 12/14 - Attended at U. S. District Court, Southern District, before Bonsal, J., re rulings on objections Curran depositions; telephone conference Sovel; prepared and delivered exhibits to Wall deposition to various counsel. - 4½ hrs.
- 12/15 - Telephone conference McInerney re Curran, Wall depositions. - ½ hr.
- 12/16 - Telephone conferences McInerney; conference Sovel here re NMU minutes; prepare for continued deposition of Wall. - 4½ hrs.
- 12/17 - Conference here Sovel; prepared for deposition; received minutes of Wall deposition; studied; delivered copy to Sovel. - 4 hrs.
- 12/18 - Telephone conferences Sovel, McInerney; prepare for deposition. - 1½ hrs.
- 12/21 - Conference here Sovel; telephone conference McInerney; prepare for deposition. - 2 hrs.
- 12/23 - Prepare and deliver minutes and exhibits to McInerney. - ½ hr.

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BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1970

- 12/28 - Telephone conference Sovel; write McInerney re adjourned date Wall deposition; telephone conference McInerney. - ½ hr.

1971

- 1/4 - Telephone conference Parker re date for hearing objections Wall deposition; telephone conference Sovel. - ½ hr.
- 1/5 - Write Judge Bonsal re request for hearing re dissemination of material marked for identification Curran's deposition, cc. McInerney and other counsel; telephone conference McInerney, Sovel. - 1 hr.
- 1/6 - Telephone conference Parker re request for hearing date; telephone conference Sovel. - ½ hr.
- 1/8 - Received McInerney's letter in reply to our application; studied; wrote Sovel. - ½ hr.
- 1/13 - Received copy of Greenhill & Spier letter to Bonsal, J., in reply to McInerney's letter; studied; telephone conference Sovel. - ½ hr.
- 1/18 - Telephone conference McInerney; advise that Court set date for hearing 1/27; telephone conference Sovel, Ingram. - ½ hr.
- 1/19 - Telephone conference Sovel re hearing date. - 1/4 hr.
- 1/27 - Attended hearing, Bonsal, J., U. S. District Court, Southern District, re our application re dissemination of evidence introduced in depositions. - 2½ hrs.

197a

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

- 1/28 - Telephone conferences Wall, Sovel, McInerney; continued deposition of Wall set for 2/2. - 1 hr.
- Total - 2 Full Days,
Plus 111 hours
- 2/1 - Conference at NMU with Wall, Sovel, and Freedman. - 4 hrs.
- 2/2 - Attended at U. S. District Court, Southern District, and NMU re continued deposition of Wall. - 7 hrs.
- 2/5 - Telephone conference McInerney re proposed deposition of Perry. - 1/4 hr.
- 2/8 - Telephone conference McInerney re adjournment Perry's deposition to 3/2; received McInerney and Ingram letters re same; telephone conferences Sovel re proposed deposition by plaintiffs of S & S Reporting Company and Lynn Dawkins. - 2 hrs.
- 2/9 - Conference Sovel, Dawkins, at NMU re deposition of Dawkins, to be held 2/10. - 3 hrs.
- 2/10 - Attended at Court re deposition S & S and Dawkins; prepare exhibits Wall deposition. - 5 hrs.
- 2/11 - Prepared digest of Curran and Wall depositions as relates to questions and answers re Perry; telephone conferences McInerney re Wall deposition; telephone conferences Sovel. - 2 1/2 hrs.
- 2/12 - Prepared for continued deposition of Wall. - 1 1/2 hrs.
- 2/16 - Telephone conferences Sovel; prepared for Wall deposition; digested Curran's depositions. - 2 hrs.

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BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

2/17	- Telephone conferences Wall, Sovel; conference at NMU with Wall, Sovel; preparation for deposition of Wall.	- 3 hrs.
2/18	- Attended at NMU; continued deposition of Wall.	- All Day
2/19	- Attended at U. S. District Court, Southern District, re deposition Seff (S & S Reporting).	- 2½ hrs.
2/22	- Phone conference Freedman.	- 1/4 hr.
2/23	- Phone conference Freedman; phone conference McInerney re continued depositions Curran, Wall, and deposition of Freedman.	- 3/4 hr.
2/24	- Attended deposition of Siegel; phone conferences Sovel.	- All Day
2/25	- Attended deposition of Karchmer; received minutes of deposition of Schultz and Dawkins; studied.	- 5 hrs.
3/2	- Attended deposition of Perry.	- 3½ hrs.
3/3	- Phone conference Sovel.	- ½ hr.
3/5	- Conference Milner; phone conference Sovel; prepared exhibits; received minutes of prior Wall examination; studied.	- 3 hrs.
3/8	- Attended continued deposition of Karchmer; phone conference Sovel; conference here Sovel; prepared exhibits.	- 6 hrs.
3/9	- Phone conference Montana, Sovel.	- 3/4 hrs.
3/10	- Attended deposition of Wall.	- 6 hrs.
3/11	- Conference JBB.	- ½ hr.
3/16	- Received minutes Seff; studied.	- ½ hr.

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BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

4/1	- Conference Milner; received Karchmer, DeNovellis, Wall and Perry minutes; studied; phone conference Freedman.	- 4 hrs.
4/6	- Conference Milner re plaintiff's motion to fix trial date, etc.; referred to Judge Bonsal; reviewed file; prepared exhibits; phone conference Gruber; delivered minutes to Freedman for study.	- 4½ hrs.
4/7	- Phone conferences Freedman.	- ¾ hr.
4/8	- Phone conferences Sovel, McInerney.	- ¾ hr.
4/9	- Phone conferences Freedman re depositions; prepared exhibits.	- 1½ hrs.
4/12	- Phone conferences Freedman, McInerney, re Freedman deposition; date set for 4/15/71.	- 2 hrs.
4/13	- Phone conferences Sovel, Montana.	- ¾ hrs.
4/14	- Conference here Freedman, Sovel, preparation for deposition.	- 3½ hrs.
4/15	- Attended deposition of Freedman.	- All Day
4/16	- Phone conferences Freedman, Sovel.	- ½ hr.
4/19	- Phone conferences Sovel, phone conferences Goodman, Montana; conference here Sovel.	- 4 hrs.
4/20	- Conference here Montana, Goodman, Cooper.	- 3½ hrs.
4/21	- Phone conference Sovel, Wall.	- 1 hr.
4/22	- Attended at chambers Judge Bonsal re trial date, etc.	- 3½ hrs.
4/23	- Phone conferences Sovel, Freedman, Wall, Montana.	- 1½ hrs.
4/27	- Received minutes of pre-trial hearing; studied; phone conferences Montana, Sovel.	- 2½ hrs.

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

- 4/28 - Phone conference Montana re Turchiano;
phone conference Wall re same (ad-
vised application for retirement
to be approved). - 1½ hrs.
- 4/29 - Attended conference at Goodman's
office; conference here Sovel. - 4½ hrs.
- 5/3 - Phone conference Sovel; con-
ference here Sovel re preparation
of pre-trial accounting. - 3½ hrs.
- 5/4 - Phone conferences Sovel certificate
of elections. - 1 hr.
- 5/10 - Phone conference Sovel re pre-
trial accounting. - ½ hr.
- 5/19 - Conference here Sovel pre-trial
accounting; phone conference Montana - 3½ hr.
- 5/24 - Phone conferences Sovel. - ½ hr.
- 5/25 - Conference here Montana, Goodman,
Sovel, re pre-trial accounting. - 6½ hrs.
- 6/1 - Phone conferences Sovel; con-
ference here Pasvol, Sovel. - 2½ hrs.
- 6/7 - Phone conference Pasvol re pre-trial
accounting. - ¾ hrs.
- 6/10 - Received pre-trial accounting Pasvol;
studied; phone conference Pasvol,
Montana. - 3 hrs.
- 6/11 - Phone conference Montana, Sovel; con-
ference here Sovel; received pro-
posed pre-trial order from McInerney;
studied. - 4 hrs.
- 6/14 - Phone conference Freedman, Montana,
Sovel; conference here Sovel; de-
livered copies of pre-trial accounting
to all attorneys. - 3 hrs.
- 6/16 - Conference here Montana, Goodman, Sovel,
re pre-trial order, pre-trial account-
ing; prepared draft pre-trial order. - 5½ hrs.

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

- 6/18 - Conference here Ingram, Montana, Goodman; phone conference Sovel re pre-trial order. - 4 hrs.
- 6/22 - Phone conferences Montana, Goodman, Cantor, Ingram, Sovel, re pre-trial order. - 1½ hrs.
- 6/23 - Conference here Reardon, Cantor, Goodman; phone conference Speyer, Ingram, Sovel, re pre-trial order. - 4 hrs.
- 6/25 - Phone conferences Sovel, Goodman; Freedman, McInerney, Cantor; conference Milner. - 3½ hrs.
- 6/28 - Conference here Cantor, Ingram, Goodman; phone conference Speyer, Wall, Freedman, Sovel. - 4½ hrs.
- 6/29 - Received proposed draft pre-trial order from Reardon; phone conference Sovel, Freedman, Wall, McInerney; conference Milner. - 2½ hrs.
- 6/30 - Phone conferences Sovel, Freedman, Speyer, Cantor; checked exhibits; conference Milner. - 3 hrs.
- 7/1 - Conference here Cantor, Ingram, McInerney; prepared pre-trial order; phone conferences Freedman, Sovel, Judge Bonsal's Secretary. - 7 hrs.
- 7/2 - Prepared pre-trial order; phone conferences Freedman, Sovel, Goodman, Cantor; conference Milner. - 3½ hrs.
- 7/4 - Phone conference Sovel; preparation for trial. - 3½ hrs.

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

(Sunday)

- 7/5 - Preparation for trial. - 4 hrs.
- (Independence Day)
- 7/6 - Phone conference Parker (Bonsal's Secretary), Freedman, Sovel, Goodman, McInerney; conference at Cooper's office, Cooper Cantor; conference with Judge Bonsal set for 7/13; received answer and counterclaim from Greenhill & Speyer; studied; returned as nullity. - 5½ hrs.
- 7/7 - Phone conference Parker, Sovel. - 1 hr.
- 7/8 - Researched law; conference Bart Bloom. - 2 hrs.
- 7/9 - Researched law; conference Milner. - 1½ hrs.
- 7/12 - Phone conference Sovel. - ½ hr.
- 7/13 - Attended conference Judge Bonsal's chambers; trial set for August 23; phone conferences Freedman, Sovel, checked exhibits. - 4½ hrs.
- 7/14 - Phone conferences Sovel re exhibits and pre-trial. - ½ hr.
- 7/15 - Received minutes pre-trial hearing; studied; phone conferences Sovel, Freedman; sent copies of minutes to Sovel, Freedman; received pre-trial order from McInerney; studied; sent copies to Sovel, Freedman; phone conferences Goodman, Cantor. - 5 hrs.
- 7/16 - Phone conference Freedman. - ½ hr.
- 7/19 - Conference here Sovel; phone conference Cantor, Goodman, Freedman; prepared and sent exhibits to McInerney; prepared letter to Bonsal, J. re "officers", cc. to all attorneys. - 8 hrs.
- 7/20 - Phone conference Goodman. - ½ hrs.

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1971

- 7/21 - Received McInerney's reply to letter to Judge; phone conference Sovel; sent copies to Sovel and Freedman. - 1 hr.
- 7/22 - Phone conference Sovel; wrote reply to Judge, cc. to all attorneys and cc. to Sovel, Freedman; conference Bart Bloom. - 2½ hrs.
- 7/26 - Received letter from McInerney re additional exhibits; studied. - ½ hr.
- 7/27 - Checked exhibits; researched law. - 2 hrs.
- 7/29 - Wrote McInerney re exhibits; re-researched law; phone conferences Goodman, Cooper, Freedman. - 2 hrs.
- Total - 3 full days
Plus 212 hrs. 45 min.
- 7/30 - Research Law - Conference here Bart Bloom; phone conference McInerney - 3½ hrs.
- 8/2 - Research Law - Conference here Bart Bloom; phone conference Sovel, Wall. - 3 hrs.
- 8/3 - Phone conference McInerney - ½ hr.
- 8/5 - Conference here Milner re trial; phone conference Freedman; Research Law - 2 hrs.
- 8/16 - Conference here Milner; Prepare Trial Exhibits; Research Law; phone conference Freedman, Sovel - 5 hrs.
- 8/17 - Conference here Freedman, Sovel; conference here Cooper, Goodman, Cantor; prepared for trial - 5½ hrs.
- 8/18 - Conference here Sovel, Milner re trial; prepared exhibits; sent to McInerney. - 5½ hrs.
- 8/19 - Conference Karchmer's office re trial; conference Sovel, Milner re trial - 7 hrs.

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

- 8/20 - Conference Milner re preparation for trial; received corrected P's accounting; studied; phone conference Cooper re Ostrin; phone conference Sovel; prepared trial subpoenas. - 4 hrs.
- 8/21 - Preparation for trial - 4 hrs.
- (Saturday)
- 8/22 - Conference at NMU - preparation for trial - 7½ hrs.
- (Sunday)
- 8/23 - Attended at trial - U. S. District Court Room 1105, Judge Bonsal; received Perry's motion to dismiss; received plaintiff's trial memo - All Day
- 8/24 - Phone conferences Sovel; conference Milner re trial brief; received trial minutes; study; Research Law; phone conference Cantor re Perry motion - 4 hrs.
- 8/25 - Conference here Sovel re trial brief, Perry motion; conference Milner; Research Law - 4½ hrs.
- 8/27 - Received Perry's brief; phone conference Cantor, Sovel - 2½ hrs.
- 8/30 - Phone conference Sovel re Perry motion, trial brief, Pasvoll accounting - 1 hr.
- 8/31 - Phone conference Sovel, Freedman, Goodman re Perry brief; received Passvol accounting; phone conference Sovel re accounting; conference Milner re trial brief - 2 hrs.
- 9/2 - Phone conference Goodman re Perry; phone conference and conference here Sovel; Milner re trial brief - 4 hrs.
- 9/3 - Research Law; prepare trial brief; conference Milner - 2 hrs.
- 9/7 - Received plaintiff's trial brief; study; phone conference Sovel, Goodman; conference Milner - 5½ hrs.

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

- 9/8 - Conference here Sovel; prepare trial brief; conference Milner; phone conference Goodman - 3½ hrs.
- 9/9 - Received plaintiff's proposed findings; study; phone conference Reardon; conference Milner; conference here Sovel; prepare findings; trial brief; from 5 P. M. - 6½ hrs.
- 9/10 - Phone conference McInerney; time to file briefs extended to 9/15; conference here Sovel; prepare trial brief; findings; conference Milner; phone conference Freedman - 5 hrs.
- 9/11 - Prepare trial brief and findings - 2 hrs.
- (Saturday)
- 9/12 - Prepare trial brief and findings - 2 hrs.
- (Sunday)
- 9/13 - Prepare findings (final); phone conference Sovel, Goodman - 4 hrs.
- 9/14 - Prepare brief, phone conference Freedman; received Perry's brief; study - 5 hrs.
- 9/15 - Filed and served findings and briefs; phone conference Sovel, Goodman - 2½ hrs.
- 9/16 - Received Karchmer's brief; study - 1 hr.
- 9/17 - Received letter from Simpson, Thatcher; study - ¼ hr.
- 9/22 - Received Perry's reply brief; study; send to Sovel; phone conference Sovel - 1 hr.
- 9/23 - Received plaintiff's reply brief; study; write memo to Court; cc all attorneys; cc to Sovel and Freedman; phone conference Parker (Judge's secretary); phone conference Sovel - 3 hrs.

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

9/27	- Received copy McInerney's letter to Court; prepared reply and sent to Court	- 2 hrs.
10/1	- Research law re Judge's order re fees	- 2½ hrs.
10/5	- Research law re Judge's order re fees	- 1½ hrs.
10/12	- Research law re Judge's order re fees	- 1 hr.
10/15	- Research law re Judge's order re fees	- 1½ hrs.
11/1	- Research law re Judge's order re fees	- 1 hr.
11/11	- Research law re Judge's order re fees	- 1 hr.
11/30	- Research law re Judge's order re fees	- 1 hr.
12/9	- Research law re Judge's order re fees	- 1 hr.

1972

1/12	- Decision; study; phone conference Freedman, Reardon	- 2 hrs.
1/13	- Phone conference Freedman; appointment set for 1/17	

Total - 1 full day
Plus 124 hours

1971

4/6	- In Federal Court to submit motion papers--Motion referred to Bensal	- 1 hr.
6/18	- Conference with HE, Kantor, Montana, Ingram	- 2 hrs.
6/28	- Conference here, HE, Kantor, Ingram, and Speyer	- 1 hr.

BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

6/29	- Phone conference - Kantor re pre trial order	- 30 min.
	Phone conference - Ingram re pre trial order	- 30 min.
6/30	- Conference - HE	- 30 min.
7/6	- Conference--Cooper's office HE, Cooper, Goodman, Kantor	- 2 hrs.
7/9	- Conference HE	- 30 min.
8/5	- Conference HE re trial procedure	- 1 hr.
8/16	- Conference HE and trial preparation	- 3 hrs.
8/18	- Conference HE, Sovel - prepared exhibits	- 2 hrs.
8/19	- Conference Karchmer's office - HE, Cooper Goodman, Kantor, Pasvol & Karchmer--Conference HE	- 4 hrs.
8/20	- Conference HE - trial preparation	- 2 hrs.
8/22	- (Sunday) Conference at NMU - HE, Curran, Wall, Freedman and Sovel	- 3 hrs.
8/23	- Trial U. S. District Court	- 1 day
8/24	- Conference HE re trial brief	- 30 min.
8/25	- Conference HE	- 30 min.
8/31	- Conference HE re Accounting and trial brief	- 30 min.
9/2	- Conference HE	- 15 min.
9/3	- Conference HE	- 15 min.
9/7	- Conference HE re plaintiff's trial brief	- 1 hr.

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BREAKDOWN OF BILL DATED FEBRUARY 3, 1972

1971

9/8	- Conference HE	- 15 min.
9/9	- Conference HE	- 15 min.
9/10	- Conference He, Sovel	- 30 min.

Total time - 28 hours

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BILL DATED OCTOBER 30, 1973.

Trustee of the
NMU Officers' Pension Plan
346 West 17th Street
New York, New York

October 30, 1973

TO WEIL, GOTSHAL & MANGES, DR.

767 Fifth Avenue

New York, N. Y. 10022

FOR PROFESSIONAL SERVICES AND DISBURSEMENTS

Re: National Maritime Union
Trustees - Pension Plan

For services rendered in connection with request for our opinion as to proposed "pro rata" pension amendment to the NMU Officers' Pension Plan, including examination and analysis of NMU Officers' Pension Plan, NMU Employees' Pension Plan, NMU Constitution, Declaration of Trust, and opinions, docket and certain briefs in the *Morrissey v. Curran* litigation; research into legislative history and judicial interpretations of Section 501 of the LMRDA; telephone conferences with Charles Sovel, and preparation of opinion letter, dated August 24, 1973

\$5,000.00

Disbursements

Overtime Stenography	\$ 57.50
Duplicating	146.45
United Lawyers' Service	.85
Miscellaneous	31.35
Messenger Service	15.00
	<u>\$251.15</u>

251.15
\$5,251.15

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BILL DATED MARCH 11, 1974.

March 11, 1974

Trustees of NMU Officer's Pension Trust

TO WILLKIE FARR & GALLAGHER, DR.

ATTORNEYS AND COUNSELLORS AT LAW

1 Chase Manhattan Plaza, New York, N. Y. 10005

FOR PROFESSIONAL SERVICES RENDERED
through January 31, 1974 in
connection with the NMU Officers'
Pension Plan and Trust.
Research, conferences, telephone
conversations, review of relevant
documents and drafting of the
following opinions to the Trustees:

Lump sum payment to Curran;
Payment of Trustee's legal
fees;
Interest on judgment against
Trustee; and
Enforcement of judgment against
Perry

\$7,000.00

DISBURSEMENTS

Stenography, telephone, postage and re-
production

59.84 \$7,059.84

211a

LETTER DATED JULY 19, 1974.

July 19, 1974

Honorable Dudley B. Bonsal
United States District Judge
United States District Court
Foley Square
New York, New York

Re: Morrissey, et al v. Curran, et al
69 Civ. 442

Dear Judge Bonsal:

Mr. Gruber has sent me a copy of his letter to you dated July 17, 1974 in which he offered to make available for Your Honor's inspection the cancelled checks evidencing payment of Mr. Freedman's counsel fees to Messrs. Bloom and Epstein and to Messrs. Paul, Weiss, Rifkind, Wharton & Garrison.

I respectfully suggest to Your Honor that the cancelled checks would be meaningless unless Your Honor also had the bills in payment of which the checks were issued.

It should also be noted that no bill was annexed to the affidavit of Mel Barisic, the Secretary-Treasurer of the NMU.

Respectfully yours,

AEM/cw

BY HAND

cc: Bromsen, Gammernan, Altier & Wayne
Simpson, Thacher & Bartlett
Charles Sovel, Esq.
Herman E. Cooper, Esq.

PLAINTIFFS' NOTICE OF MOTION DATED JUNE 6, 1969.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Arthur E. McInerney, sworn to the 6th day of June, 1969, the complaint filed in this action, and all the proceedings heretofore had herein, including the memorandum decision of this Court herein dated May 23, 1969 plaintiff will move this Court at Room 506 of the Courthouse at Foley Square, Borough of Manhattan, New York, New York, on the 17th day of June, 1969, at 10:00 a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to the Federal Rules of Civil Procedure granting an order ancillary to the decision dated May 23, 1969 enjoining the defendants from employing legal counsel retained by the Union (NMU) and directing that they engage legal counsel in their individual capacities in all future proceedings herein to be compensated by them personally and enjoining the said defendants from promulgating exculpatory proposed retroactive

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PLAINTIFFS' NOTICE OF MOTION DATED JUNE 6, 1969

amendments to the NMU Constitution in contravention to 29 USC 501 and against public policy, and for such other and further relief as to the Court may seem just and proper.

DATED: New York, N. Y.
June 6, 1969

Yours, etc.

DUER & TAYLOR
Attorneys for Plaintiffs
74 Trinity Place
New York, N. Y. 10006
Tel. No. 944-7482

TO:

ABRAHAM E. FREEDMAN
Attorney for Defendants
36 Seventh Avenue
New York, N. Y.

SIMPSON THACHER & BARTLETT
Attorneys for Defendants
Leon Karchmer and Martin Segal
120 Broadway
New York, N. Y.

CHARLES SOVEL
Attorney for Defendant,
Abraham E. Freedman
36 Seventh Avenue
New York, N. Y.

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969;
IN SUPPORT OF PLAINTIFFS' MOTION.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

State of New York,

County of New York, ss:

ARTHUR E. MCINERNEY, being duly sworn, deposes and
says, on information and belief:

I am a member of the firm of Duer & Taylor, attor-
neys for the plaintiffs herein and am fully familiar with
all the proceedings herein.

This affidavit is made in support of plaintiffs'
cross motion to enjoin the defendants from using counsel
employed by the union on a retainer basis and to enjoin
the defendants from circumventing this Court's order by
the proposed exculpatory amendments to the union consti-
tution which are in contravention of 29 USC 501 and
against public policy and in opposition to defendants'
Motion to Reargue.

The Court has fully considered all the material
facts and rendered a decision with respect to the evi-
dence adduced herein in connection with the National
Maritime Union's Officers' Pension Plan.

The defendants have not shown, on this motion to
reargue, that the Court has misinterpreted, misapplied,

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969,
IN SUPPORT OF PLAINTIFFS' MOTION

overlooked, or misunderstood any of the facts, or the law involved.

The sole thrust of the plaintiffs' cross motion (which the Court has pointed out was unnecessary since the motion for summary judgment searches the record and judgment may be entered for either side on such motion) concerned the officers' pension plan only.

But what defendants have failed to disclose is that these same defendants have, in contravention of the specific mandate of 29 USC 501, since this Court's decision, undertaken to amend the constitution retroactively. (See copy of the NMU Pilot June, 1969 issue, p. 20, photostatic copies of the page referred to are being served on defendant's attorneys). This said proposed amendment is designed to circumvent this Court's decision and the clear intention of the law - and comes within that portion of 29 USC 501 which provides:

"* * * A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969,
IN SUPPORT OF PLAINTIFFS' MOTION

So, interestingly enough, we have the defendants employing the dilatory tactic of moving to reargue, reciting that the Court was in error and at the same time taking steps to amend the constitution retroactively - the constitution they claim was sufficiently broad to permit them to do what they did in the first place.

They have further disregarded, by this most recent action, that portion of 29 USC 501 which reads:

"* * *

It is, therefore, the duty of each such person* * *to hold its (NMU's) money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same to manage, invest, and expend the same in accordance with its constitution* * *to *refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties* * * *" (parenthetical material and italics added)

In addition to the foregoing, newly discovered evidence has recently come to my attention, and is submitted to refute the following allegations made by defendants on their motion for summary judgment:

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969,
IN SUPPORT OF PLAINTIFFS' MOTION

"In particular, certain executive and supervisory employees were not covered by union contracts, and therefore, did not have any pension rights." (Affidavit of Shannon J. Wall, sworn to the 27th day of February, 1969 in support of defendant's motion for summary judgment and the dismissal of the complaint herein) (*italics added*)

While the plaintiffs herein do not concede that William Perry, the named defendant herein, is presently entitled to receive the same, the Court's attention is directed to the NMU Pilot, April, 1969 edition, p. 28, wherein the defendant, William Perry, is named a recipient of a Service Pension under the NMU Deep Sea Pension Plan. (A copy of the said issue is submitted with the original - photostatic copies of the page referred to are being served on defendants' attorneys). There seems to be no question that once the defendant William Perry qualifies under the NMU Deep Sea Pension Plan, by virtue of service requirements, he will be then eligible to receive those payments under that plan.

It is respectfully submitted that the records pertaining to William Perry's interest in the NMU Deep Sea Pension Plan were in the possession of the affiant,

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969,
IN SUPPORT OF PLAINTIFFS' MOTION

Shannon J. Wall, at the time he made the sworn representation to the Court heretofore recited herein. The said representation was less than frank and made with the intention to mislead and deceive the Court.

There are others also receiving or will be eligible to receive two pensions - rather than "not having any pension rights" as was suggested by the defendants.

The information made available to me indicates the following salaries fixed for some of the employees which have been included in this Officers' Pension Plan.

<u>Name</u>	<u>Office</u>	<u>Salaries</u>
*William Perry	Ex. Asst. to President	\$ 34,484
*Bernard Raskin	Director of Publications & Public Relations	24,905
Milton Breit	Controller	19,928
Miguel Quinones	Organizer	16,735
Irving Brauch	Superintendent	16,251
Robert Amon	Pilot Writer	13,658
Charles Snow	Head of Security	12,892
Mary Lee	Executive Secretary	11,719

* plus 24 hour a day use of a Lincoln Continental

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969,
IN SUPPORT OF PLAINTIFFS' MOTION

This information is submitted in support of the plaintiffs' contention that the unauthorized recipients are "favored employees." This admittedly partial list does not include the name of Joseph Paul Curran, the defendant Curran's son, who was employed by the Union on or about March of 1969. He is also an unauthorized participant in the said plan. The Department of Labor has no record of his salary and therefore I have been unable to acquire any information as to the amount of his salary.

Also submitted herewith in the NMU Newsletter, Vol. 10, No. 6, June 3, 1969, which is worded in such a way as to lead the seamen members of the NMU to believe they lost the instant litigation.

"NMU must, of course, appeal this decision because of the injustice which it imposes on their (sic) employees and because it is a further demonstration of the readiness of the courts to interfere, on the basis of the flimsiest technicalities, in matters of Union administration that should be for the membership - and the membership alone - to decide."

AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969,
IN SUPPORT OF PLAINTIFFS' MOTION

While this was not before the Court on the underlying motion, the language indicates that the defendants intend to charge the NMU treasury for the legal services rendered to them personally and in their individual capacities. This would, of course, be a clear and additional violation of 29 USC 501.

There have been instances where union officials have been enjoined from using counsel employed by a union under an annual retainer to defend them.

Since those circumstances are present - Abraham E. Freedman occupies offices at the Union building and represents the Union on a retainer basis and Charles Sovel is one of his associates - the defendants should be directed to retain counsel independent from union representations and to compensate said counsel out of their individual pockets.

WHEREFORE, the plaintiffs' motion to enjoin the defendants from using counsel employed by the Union on a retainer basis and be directing them to employ counsel in their individual capacities at their individual expense and enjoining them from attempting to circumvent this court's order by their promulgation of the proposed retroactive amendments to the Union Constitution which

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AFFIDAVIT OF ARTHUR E. MCINERNEY SWORN TO JUNE 6, 1969,
IN SUPPORT OF PLAINTIFFS' MOTION

are in contravention of 29 USC 501 and against public policy should be granted and the defendants' motion to reargue should be denied.

(Sworn to by Arthur E. McInerney, June 6, 1969.)

EXHIBIT ANNEXED TO AFFIDAVIT OF ARTHUR E. McINERNEY.

NMU
NEWSLETTER

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO

National Headquarters:
The Joseph Curran Building
36 Seventh Avenue,
New York, N. Y. 10011

Vol. 10, No. 6, June 3, 1969

TANKER COMPANIES NEXT:**PASSENGER-FREIGHTER AGREEMENT
PROVIDES 33% PACKAGE OF GAINS**

The NMU membership is voting this week on ratification of the biggest package of contract gains ever achieved in the maritime industry. Increases which total 33% on a three-year contract were agreed to by passenger-freighter operators nearly two weeks before the June 15th expiration. Major gains include wages, overtime, vacations, pension and welfare and working conditions. Agreement came after nearly eight weeks of negotiations, in which NMU, MEBA and ARA worked together with unprecedented unity.

The gains were headed by base pay increases of 6%-6%-6% which means better than 19% base pay raise by the end of the second year of the contract. On top of this, straight overtime is to be increased in stages to the full time-and-a-half rate, which is estimated to mean an average increase in monthly pay of at least \$200 per man. Time and a half for overtime is a long-sought goal which the companies always have fiercely resisted.

In addition, several new highs were achieved in pension and welfare protection. Welfare gains include major medical payment plan providing up to \$10,000 protection on each dependent; family hospital payment benefit increased to \$36 per day for up to 70 weeks on each confinement; also payments for doctors visits, higher surgical benefits and other gains.

Employers also agreed to principle of guaranteeing pension benefits for a number of years with widow receiving remaining benefits in case pensioner dies before that time. Length of guarantee will be decided by actuarial study. Other pension gains include guaranteed income formula requested by Union earlier this year which provides important bulwark for strength and stability of plan.

The agreement also provides for adjustment of 13 contract provisions to eliminate differentials between licensed and unlicensed. New agreement also provides penalty pay for all work in port between 5 P.M. and 8 A.M., including watchstanders. Provisions on sailing board, breaking-setting sea watches, restriction to ship, payoff procedures, transportation clause and others will be adjusted upward to eliminate differentials between licensed and unlicensed.

Vacations will be increased during contract period to 10 days vacation for every 30 days worked. This will be

TO PROTECT NMU EMPLOYEES**VOTE 'YES' ON AMENDMENTS,
NATIONAL COUNCIL URGES**

Following is full text of National Council statement explaining importance of "Yes" vote in Constitution referendum:

Leaders of the handful of so-called dissidents who ran for office in the recent NMU elections and who were overwhelmingly rejected by the membership, have been trying to continue their campaign of confusion and disruption within NMU by other means. Through further use of anti-labor laws and anti-labor bias, with high-priced legal aid, they are continuing this campaign in the courts, filing one suit after another against the Union on any grounds their lawyers can find. Any gimmick or technicality can form the basis for one of their suits.

Most of the actions are being thrown out by the courts as being without foundation. Even such actions serve the dissidents' purpose, however, because the mere filing of any suit against a union will bring the union a measure of unfavorable publicity. Apparently, anything that can discredit, weaken or cause loss of confidence in NMU, suits the purpose of these characters. Even while the Union is locked in crucial negotiations with deep sea operators their efforts go on.

There have been some decisions given by government agencies and courts in their favor. But when the final decision was in the hands of the NMU membership they have been consistently and solidly defeated. The key example was the election itself in which the voting by the membership was, right down the line, a

reaffirmation of the 1966 election, with an even more solid vote for the Administration.

Now, repudiated by the membership in their attack on officials, the dissidents are trying to take their spite out on employees of the Union. They filed suit some time ago challenging the right of certain employees of the Union—department heads and other key people who are not covered by any union contracts—to be included in the NMU Officers Pension Plan. Last week, as a result of this suit, a Federal district court in New York ordered the Trustees of the Plan not to honor obligations which the Pension Trust has incurred to these employees.

EXHIBIT ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

Win 33% Wage Package

in addition to the 4 extra days for every 30 provided for work on containerships on fast turnaround.

The agreement also provides for companies to add another 15 cents to current contributions to the NMU Automation Fund.

In wire to all ports and ships, President Curran, speaking as chairman of the NMU Negotiating Committee declared: "Solidarity of NMU membership and unity of maritime unions provided the keys to the unprecedented gains for seamen in this contract. Now all must work together to achieve positive government program that will revitalize the U.S. merchant marine. Ratification of this contract is the first step. Then we must solidify our ranks for the big battles ahead. This gives us something really worth fighting for."

BASE PAY INCREASES

Key Ratings	Current Monthly Wage	Effective June 16, 1969	June 16, 1970	June 16, 1971	Total Monthly Base Pay Increase
Bosun (Conventional Vessel)	\$583.03	\$618.01	\$655.09	\$694.40	\$111.37
Electrician	686.04	727.20	770.83	817.08	131.04
Demac (day)	641.26	679.74	720.52	763.75	122.49
Chief Steward (New Ships)	644.31	682.97	723.95	767.39	123.08
Chief Cook	518.13	549.22	582.17	617.10	98.97
Cook/Baker	505.00	535.30	567.42	601.47	96.47
Skilled Ratings					
Deck Utility	\$495.59	\$525.33	\$556.85	\$590.26	\$ 94.67
A.B.	443.71	470.33	498.55	528.43	84.72
Fireman/Watertender	443.71	470.33	498.55	528.43	84.72
Oiler	443.71	470.33	498.55	528.43	84.72
3rd Cook	438.49	464.80	492.69	522.25	83.76
Entry Ratings					
O.S.	\$346.40	\$367.18	\$389.21	\$412.56	\$ 66.16
Wipers	412.09	436.82	463.03	490.81	78.72
Mess/Utility	343.94	364.58	386.45	409.64	65.70

ESTIMATED OVERTIME INCREASES

Key Ratings	Current Hourly Rates	Effective June 16, 1969	June 16, 1970	June 16, 1971	Total Hourly Increase
Skilled Ratings	\$2.86	\$4.48	\$5.23	\$6.05	\$3.19
Entry Ratings	\$2.80	\$3.44	\$4.02	\$4.64	\$1.84
	\$2.18	\$2.73	\$3.18	\$3.68	\$1.50

Council Urges 'Yes' Vote

The employees affected by this ruling have given NMU years of faithful service, some as many as 25 years. The pension coverage was part of their working agreement with NMU over the years.

The court decision casts no question on the NMU Officers Pension Plan as such. Nor does it in any way affect the pensions of the elected officials. What it does is strip this group of employees of the Union of the pension protection which they have built over the years in what they believed was a proper agreement with their employer, the National Maritime Union.

NMU must, of course, appeal this decision because of the injustice which it imposes on their employees and because it is a further demonstration of the readiness of courts to interfere, on the basis of the flimsiest

technicalities, in matters of Union administration that should be for the membership—and the membership alone—to decide.

NMU must fulfill its solemn agreement with the employees of NMU whose years of pension credits would be cast aside by the court's ruling. We must establish the right and the ability of our National Office to deal in good faith with these people and with key people the Union will want to employ in the future.

All actions of the Union and its officials in connection with the NMU Officers Pension have been taken on the basis that they are in accordance with our Constitution and regulations of the New York State Insurance Department and any other state and Federal agencies involved.

Text of Amendments and National Council Comment

"A Court decision has been rendered challenging the right of NMU to include certain employees of the Union—department heads and other key people who are not covered by any Union contracts—in the NMU Officers Pension Plan. The employees affected by this suit have given NMU years of faithful service, some as many as 25 years. The pension coverage was part of their working agreement with NMU over the years.

"This action casts no question on the NMU Officers Pension Plan as such, nor does it in any way affect the pensions of the elected officials. What it does is strip this group of employees of the Union of the pension protection which they have built over the years in what they believed was a proper agreement with their employer, the National Maritime Union.

"These amendments clarify long-established policies or programs of the Union. It is in conformity with a previous referendum overwhelmingly approved by the membership. The Court, however, has interpreted the Constitution contrary to that expressed intention of the

membership. Therefore, to enable NMU to fulfill its obligations and protect the pension benefits of these employees, the National Council at a special meeting held on May 28, 1969, unanimously recommended that the following amendments to the Constitution be adopted":

Add the following paragraph to Article 8, Section 11:

(d)—The National Office shall have the authority to provide pensions for all past and present employees of the Union and to protect the pension rights of all past and present employees of the Union.

Amend Article 14, Section 7 to read as follows:

Pensions: All officers and such employees as the National Office may designate, shall be eligible for benefits under the NMU Officers Pension Plan, subject to such rules and regulations as the Trustees of that Plan may establish. The National Office shall have the authority to validate retroactively all pensions heretofore paid under the Plan.

EXHIBIT ANNEXED TO AFFIDAVIT OF ARTHUR E. McINERNEY

11 Court says Union cannot honor pension agreements with staff

A federal court judge last month ruled that the NMU Officers Pension Plan cannot fulfill obligations to employees of the Union. The ruling does not question the Plan itself or the pension of any official, it is aimed only at the Union department heads and executive employees whose agreements with the Union have included pension coverage under the Officers Plan. The judge held that a strict interpretation of the Constitution allows coverage only of elected officials.

A few key employees are affected, who have been in the Union's employ for periods ranging from six to over 25 years. As supervisory and executive employees they are not covered by NMU's collective bargaining agreements with other unions.

The ruling involved one of the many lawsuits filed by unsuccessful candidates before and during the last NMU elections. Although the decision of the NMU membership in the elections was overwhelmingly against them, the litigation left by these defeated candidates still has to be disposed of. Most of it has been thrown out of court as incompetent and irresponsible. This one will have to go to a higher court.

President Curran said: "This is typical. The membership turned down their attack on officials in the recent elections, so they are taking their spite out on staff people who have given the Union years of valuable service. The Union has to see that our obligations to these people are honored. We are preparing amendments to the Constitution which will be submitted to membership referendum. We ask the membership for overwhelming approval, not only to make sure these employees are not deprived of their hard-earned pension rights; but to keep this Union a democratic union that is run by its members."

Following is the text of Constitutional amendments which will be voted on by the membership in the referendum this month:

Amend Article 8, Section 11 to add the following paragraph:

The National Office shall have the authority to provide pensions for all past and present employees of the Union and to protect the pension rights of all past and present employees of the Union.

Amend Article 14, Section 7, as follows:

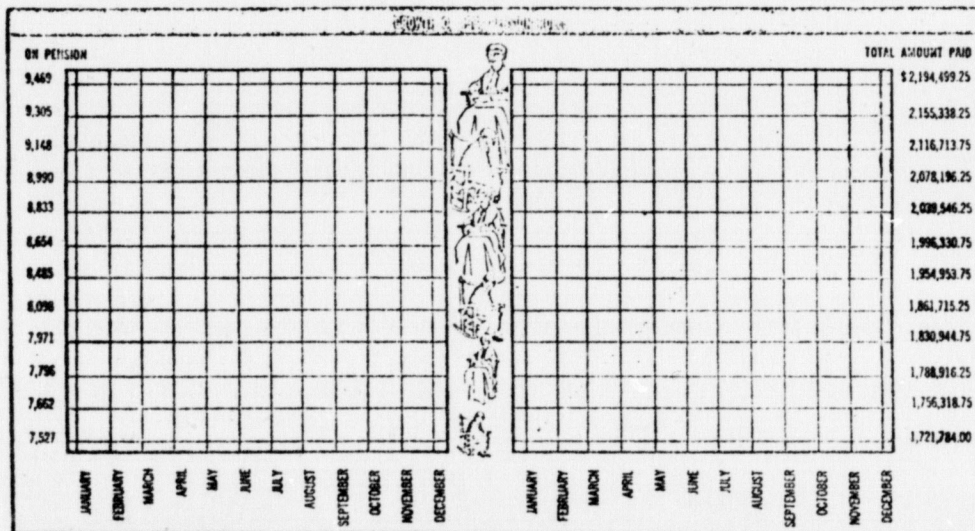
Sec. 7.—Pensions: All officers and such employees as the National Office may designate, shall be eligible for benefits under the NMU Officers Pension Plan, subject to such rules and regulations as the Trustees of that Plan may establish. The National Office shall have the authority to validate retroactively all pensions heretofore paid under the Plan.

Note: Language underlined is new language.

EXHIBIT ANNEXED TO AFFIDAVIT OF ARTHUR E. MCINERNEY

April 1966
N. M. U. Pilot

10,000th NMU pensioner to be named



If the rate of retirement among NMU members continued as it has over the past 14 months, the NMU Deep Sea Pension Plan should have named its 10,000th active pensioner at the March Trustees meeting. There were 9,865 active pensioners at the conclusion of the February 21 meeting at which the Trustees approved an additional 197 pensions.

Over the 24-month period of the calendar years 1967-1968 the number of men and women receiving deep sea pensions rose from 5,640 in January, 1967 to 9,460 in December 1968. The figures went up an average of 166 per month over this period. Add 166 pensioners to the 9,865 approved in February of this year and the March figure will have to be more than 10,000.

Of the 179 pensions approved at the February meeting of the Trustees 159 were Service Pensions; 7 were Reduced Pensions; 3 Early Retirement and 10 Disability. The monthly cost of all active pensions, including 60 Pro-Rata Pensions, is \$2,292,553.50.

Following is a list of pensioners approved by the Trustees on February 21:

SERVICE PENSIONS

Name	Name	Name	Name
Abreu, Albert	DeLaCruz, Miguel	Hunt, John T.	Phillips, Octave
Ally, Orlando	DeLana, Narciso F.	Jacques, Minya	Pierce, Elwood
Ambruce, Anthony	Diaz, Carlos E.	Johanson, Lonnie	Pike, Oswald B.
Aquino, Pete	Diaz, Juan V.	Juan, Han Cher	Piner, George
Archer, John	Dillworth, John	Karkainen, Viikko	Plumley, Eugene O.
Aronok, Manuel	Dominquez, Louis	Karpinski, Joseph	Ponte, Bautista
Atwood, Kenneth	Dorrel, Albert	Keeling, Louis	Rios, Bernardo P.
Boss, Chaimiro	Dougan, Albert M.	Koon, Albert	Roehfeld, Harold
Bagley, Horace	Dossier, Emley	LaGarde, Victoriano L.	Rivera, Manuel
Bayron, Alfredo	Drioli, Emil	Leong, Tsang	Rivera, Zenon E.
Bermudez, Ulices	Dubowsky, John	Lewis, William D.	Rodriguez, Juan
Bisard, William A.	Eagy, Melvin	Lightner, Albert	Rovira, Luis
Bogumil, Louis	Easterling, Luther R.	Lisby, George	Rushing, Thomas R.
Briscoe, John C.	Edwards, Howard	Lorin, Jack C.	Sanders, Harry
Brown, Albert	Escalante, Nephtaly S.	Lorty, George	Sanford, Phillip F.
Bundy, Rudolph	Feliciano, Felix	Mahibulan, Edilberto A.	Santana, Rafael V.
Burton, David M.	Fernandez, Calvin	Marrero, Raul P.	Santiago, Miguel
Butler, Bobby	Fernandez, Rafael	Marty, Adriano	Sellner, Gustavo
Byers, Arthur	Fernandez, Roman	Matias, Fernando L.	Silos, Miguel
Byrd, Grady	Figueroa, Emilio	McDougal, Luis	Silva, Silvio A.
Campbell, Harry	Frederstein, Sanford D.	McLenn, Milton	Snclair, Roland
Canastella, Rocco	Foranwall, Jack	Melendez, Sotero	Smith, Horace D.
Casas, Juan	Franklin, Jess C.	Mendoza, Nick	Sullivan, Frank
Catlin, St. Aubin	Garcia, Felix	Miles, Richard G.	Suber, Jack
Chatter, Julie S.	Garcia, Herman	Moore, Arthur	Sturgill, Paul
Cornias, Larrie	Galego, Belmimo	Morillo, Jesse	Tong, Leong
Coldin, Jack	Gomez, Jose M.	Muttik, Johannes	Twine, Bruce A.
Colon, Dennis	Gordon, Charles	Neri, Harry	Urea, John
Combs, Camille	Grubbs, Carl W.	Nicholson, Henry	Villa, Isabela
Constantine, Claudius	Green, Peter S.	Noriega, John J.	Viollette, Harry E.
Cook, Thomas	Greene, Carlton	O'Neill, Max	Virella, Pedro M.
Cora, Alvaro	Guthrie, Clee E.	Oquendo, Manuel	Walter, Harding C.
Cota, Humberto	Gutierrez, Joseph	Pacheco, Cruz	Watson, Paul R.
Cox, Walter E.	Hankins, Mack M.	Parsons, Baxter S.	Waxing, Willie
Crimmins, John	Harris, Don E.	Patterson, John	Williams, Cloon
Cris, Mel	Harris, Love	Payne, William B.	Williams, George
DaSilva, Jose B.	Hong, Yan J.	Paxton, Foster M.	Williams, Walter
Davis, John	Hernandez, Roman	Pennings, Williams D.	Wineholder, Floyd
Davis, Leavel C.	Hidraah, Stanley	Perez, Joe	Yuen, Iudro
Dehan, Pedro A.	Hodgson, Frank	Perry, William	

REDUCED PENSIONS

Name	Total Yrs. of Credit
Bath, Rupert	17
Coletta, Armando A.	18
Dracotta, Matteo	18
Giffin, Eugene C.	18
Harris, Frederick D.	17
Monson, Charles E.	18
Williams, Leslie	16

EARLY RETIREMENT PENSIONS

MacLeod, Donald	16
Vega, Felix V.	17
Bellafor, Rustico T.	18

DISABILITY PENSIONS

Attard, Paul	22
Bredix, Leon L.	18
DeJesus, Rufel R.	18
Heiler, Peter	22
Joseph, Milton	22
Ortiz, Emilio R.	17
Scott, Phillip	16

DISABILITY PENSIONS (10 Year)

Capps, George L.	10
Simmons, Cleveland	11
West, George A.	12

*Does not have time in for
Pension 90 years required*

*He was naturalized in
Detroit on Aug 26, 1952*

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED JULY 6, 1970.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

BONSALE, D. J.

On February 20, 1970, the Court of Appeals affirmed this court's decision of May 23, 1969, 302 F. Supp. 32 (S. D. N. Y. 1969) (order filed July 11, 1969) holding that the 1960 NMU Constitution did not authorize the inclusion of non-officers in the Pension Plan, but it reversed this court's denial (order filed July 3, 1969) of plaintiffs' motion to enjoin the implementation of the June 24, 1969, amendments to the NMU Constitution authorizing the National Office "to provide pensions for all past and present employees of the Union," Amended Art. 8, §11, and authorizing the National Office "to validate retroactively all pensions heretofore paid under the Plan." Amended Art. 14, §7, stating that this court's conclusions

"might have been correct if the provisions were prospective only in their application but the amendment to Article 14, §7 provides in part:

'the National Office shall have the authority to validate retroactively all pensions heretofore paid under the plan.' This is clearly exculpatory in intent and language. The NMU

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED JULY 6, 1970

exercised its authority under the 1969 amendments to attempt to validate retroactively all the pensions previously paid. The determination that the 1969 amendments were not exculpatory is reversed and will be reconsidered on remand.

* * *

As the June 24, 1969, amendments to the NMU constitution are clearly exculpatory as prohibited by §501(a), we reverse the denial of plaintiffs' motion to have these amendments declared void, and remand to the district court for appropriate action declaring the amendments to be without effect and enjoining defendants from acting in reliance upon them." Slip Opinion, pages 1591--1593.

In accordance with the mandate of the Court of Appeals, the June 24, 1969, amendments to the NMU Constitution are declared to be without effect and the defendants will be enjoined from acting in reliance upon them.

In its opinion, the Court of Appeals also directed this court to determine on remand plaintiffs' motion that defendants be enjoined from retaining counsel paid or to be paid with union funds. The Court of Appeals affirmed

MEMORANDUM DECISION OF DUDLEY B. BONSALE U. S. D. J.
DATED JULY 6, 1970

this court's determination that the 1960 Constitution did not authorize the inclusion of non-officers in the Pension Plan, and further held that the 1969 amendments were exculpatory, and thereafter defendants Curran, Wall, Perry, and Freedman's petition for a writ of certiorari was denied on June 29, 1970. Plaintiffs have therefore clearly made a "reasonable showing that [they are] likely to succeed" with their claim, the standard under the controlling cases, *Tucker v. Shaw*, 378 F. 2d 304 (2d Cir. 1967) and *Holdeman v. Sheldon*, 311 F. 2d 2 (2d Cir. 1962). Since on the one hand union counsel is defending the union officers and Perry against alleged illegal payments of union funds, and on the other hand union counsel is under a duty to obtain repayment to the union treasury of any funds illegally paid, there is an obvious conflict of interest, and plaintiffs' motion to enjoin defendants from employing counsel paid or to be paid from union funds must be granted.

An appropriate order is being signed and filed herewith.

DATED: New York, N. Y.
July 6, 1970

DUDLEY B. BONSALE
U. S. D. J.

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ORDER DATED JULY 8, 1970.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

Upon reading the mandate of the United States Court of Appeals for the Second Circuit dated February 20, 1970, filed in this Court May 22, 1970, and the Opinion of the United States Circuit Court of Appeals dated February 20, 1970, and all the pleadings and proceedings heretofore had herein,

Now, on motion of Duer & Taylor, attorneys for plaintiffs, it is

ORDERED that the Order of this Court herein dated July 11, 1969, and the Judgment entered July 18, 1969, is in all respects confirmed; and it is further

ORDERED that the June 24, 1969 Amendments to the NMU Constitution, having been found exculpatory by the Court of Appeals and hence prohibited by §501(a) of the Labor Management Reporting Act of 1959, are declared to be void and without effect and defendants are enjoined from acting in reliance upon them, and the Order of this Court filed July 9, 1969 is vacated; and it is further

ORDERED that the defendants serve the plaintiff with a copy of the account and file the original thereof with the Court forthwith not later than July 31, 1970; plaintiffs shall serve and file objections to the accounting, if any, within thirty days after service upon them of the

ORDER DATED JULY 8, 1970

accounting; plaintiffs shall commence discovery in support of their objections after the filing of said objections and such discovery shall be completed within 60 days after the filing of said objections; provided, that the time limits imposed may be extended by stipulation among the parties, or absent such stipulation, by order of the Court for good cause shown; and it is further

ORDERED that the costs allowed to plaintiffs against the defendants in the Court of Appeals amounting to five hundred and thirteen dollars and seventy-one cents (\$513.71) be made a judgment of this Court in favor of the plaintiffs against the defendants and that execution issue therefor;

And it appearing that plaintiffs have made a reasonable showing that they are likely to succeed in this action, and it is further

ORDERED that the defendants are enjoined from employing counsel paid or to be paid with union funds; and it is further

ORDERED that this Court retains jurisdiction for the purpose of the carrying out of this Order.

Dated: New York, New York
July 8, 1970.

DUDLEY B. BONSAL
United States District Judge

JAMES M. MORRISSEY et al,

Plaintiffs-appellees-appellants

--against--

Joseph CURRAN, et al,

Defendants-Appellants Appellees

AFFIDAVIT
OF SERVICE

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

Bernard Greenberg

being duly sworn,

deposes and says that he is over the age of 21 years and resides at 162 East 7th Street
That on the 11th day of February, 1975 New York, N.Y.

he served the annexed Brief of defendant-appellant-appellee, Leon Karchmer upon
Joint Appendix

Simpson, Thacher & Barlett, Attorneys for Segal, Defendant-Appellant-appellee, One Battery
Park Plaza, New York, N.Y. 1004
Duer & Taylor, Attorneys for the Plaintiffs-appellees-appellants, 74 Trinity Place, New York, N.Y. 10006

in this action, by delivering to and leaving with said attorneys three copies of brief & Appendix
three true copies to each thereof.

DEPONENT FURTHER SAYS, that he knew the persons so served as aforesaid to be the persons
mentioned and described in the said action.

Deponent is not a party to the action.

Sworn to before me, this 11th
day of February, 1975

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977

Bernard S. Greenberg